THE COMPANIES ACT 1929

T. J. VARLEY

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COMPANIES ACT, 1929

WITH COMMENTARY

COMPANIES ACT, 1929

WITH

COMMENTARY AND APPENDICES

BY

F. J. CARLEY

OF THE INNER TEMPLE AND LINCOLN'S INN, BARRISTER-AT-LAW

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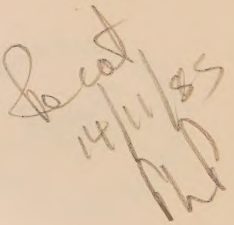

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INTRODUCTION

The Companies Act, 1929 [19 and 20 Geo. 5, ch. 23], is the result of a general review of the operation of the Companies Acts by a Committee appointed by the Board of Trade early in 1925 under the Chairmanship of Mr. Wilfred Greene, K.C., with terms of reference extending to the whole field of Company Law. This Committee held 38 meetings, examined 39 witnesses, carefully considered many suggestions from other sources, and issued its Report in May, 1926.

This Report as well as the Minutes of the evidence upon which it is founded deserve the careful attention of all who are interested in Company Law.

On a number of matters of principle the Committee was unanimous in recommending an alteration in the existing law; and numerous amendments of a minor character calculated to remove existing anomalies were also recommended. The Committee further recommended that any amending Act should be immediately followed by a Consolidating Act embodying the whole Statute Law relating to companies in a single code. The recommendations made, though they did not go so far as was desired by certain interests in view of some notorious frauds and malpractices which had aroused a lot of public resentment, were generally acceptable, so much so that it was practically certain that any amending legislation based on the Report would be in the nature of an agreed measure. Nevertheless Parliamentary time, owing to political and other exigencies, could not be found to devote to this important measure, and the only recommendation (which the Committee recognised to be outside the strict terms of reference) to which effect was given was that relating to remission of stamp duties on certain reconstructions and amalgamations, which found a place in the Finance Act, 1927.

Eventually under the pressure of public opinion an Amending Bill based on the Committee's recommendations was introduced, but owing to the unexpected and inordinate time occupied in Committee (on which dissenting interests were specially vocal), there was a considerable fear that the measure would not become law before the end of the Session in 1928, and special measures were adopted to secure its passage.

The Act received the Royal Assent on 3rd August, 1928. It is "an Act to amend the Companies Acts, 1908 to 1917, and for purposes connected therewith," and is known as the Companies Act, 1928 [18 and 19 Geo. 5, ch. 45], but except to a very limited extent has not been and will apparently never be in operation, except to give birth to the present Act. By Section 118 (4), Section 92 (which places restrictions on offering of shares for subscription or sale) came into operation on the passing of the Act, and by a subsequent Order in Council Section 53 (which repeals Section 45 of the Act of 1908) was put into operation. In view of what subsequently transpired the scheme of this Act requires attention: it follows, so far as possible, the order of the Sections in the 1908 Act (which is referred to as "the principal Act") in the introduction of amendments, and new matter was introduced in appropriate Sections, and it was clearly intended that, in the consolidation which was to follow, the general scheme of the "principal Act" was to be preserved; but unfortunately for those accustomed for years to this general scheme and the order of the sections the draftsmen of the present Act have wholly abandoned them, and reproduced the results of consolidation in an order which is claimed to be more logical. Apart from this the difficulties attending consolidation proved to be considerable, while further legislation was out of the question.

It is beyond the scope of this Introduction to notice the difficulties and technicalities which were eventually surmounted in time to enable the present Act to pass into law on the eve of the dissolution of Parliament. The Act, however, is kept in suspense until a future date

which, in the last Parliament, was given as about November, 1929. The method of bringing it into operation is a peculiar one, for by Section 385 (2) it is enacted, "This Act shall come into operation on the first day on which by virtue of Orders made by His Majesty in Council under sub-section (4) of Section 118 of the Companies Act, 1928, all the provisions of that Act will be in operation." Under Section 381 and Part I of the Twelfth Schedule the Companies Act, 1928, will be repealed as a whole, and in the meantime it is uncertain whether under the provisions of Section 118 of the 1928 Act any further provisions of that Act will be put into operation.

It has seemed desirable to treat the Companies Act, 1929, as, in effect, a new code, although it incorporates so much of the existing law relating to companies, and in the commentary appended to the various sections or groups of sections to follow the arrangement of the Act, indicating what is new altogether, and in what respects existing law has been amended.

The cases cited are intended to be illustrative rather than exhaustive, as the scope of this edition precludes any detailed examination of decided cases. Matters of practical importance have been noted, and references made to cognate subjects in company administration, and it is hoped that this edition may prove serviceable to company officials and those who in other ways are concerned with company affairs, upon many of whom grave responsibilities are cast by the Act.

Primarily intended for the solicitor and the company official, it may also prove to be suggestive to others who require to be acquainted with the new code.

It is impossible to anticipate how the new provisions are going to work, or what interpretation is likely to be put on certain of these provisions. The provisions relating to Accounts, Directors, and Auditors' Liabilities, Prospectus and Offers for Sale and other matters, make radical changes in the existing law, and introduce new responsibilities for those connected with company administration. The importance of obtaining some acquaintance with the provisions of the new code before it comes

into operation is obvious, and the necessity for familiarising himself with the arrangement adopted for the new code will be all the greater for any lawyer or official well versed in the existing law and practice.

Sections in the Companies Act, 1929, which are Entirely New.

22, 24, 38, 40, 45, 46, 47, 51, 62, 64, 67, 70, 81, 90, 91, 96, 103, 106, 107, 109, 115, 116, 119, 121, 122, 123, 124, 125, 126, 127, 128, 136, 139, 142, 144, 148, 149, 150, 151, 152, 154, 155, 166, 180, 190, 201, 215, 217, 230, 237 to 240 (inclusive), 243, 253, 263, 267, 268, 269, 271, 273, 274, 275, 277, 278, 279, 280, 281, 286, 287, 292, 296, 306, 308, 309, 310, 311, 315, 320, 347, 350, 353, 354, 356, 365, 368, 369.

By entirely new is meant that these Sections are taken from the Companies Act, 1928, alone, and are not sections consolidating the provisions of the Companies (Consolidation) Act, 1908, with provisions of the Companies Act, 1928. Sections of the 1908 Act so consolidated are numerous, while many of the Sections of the 1908 Act are re-enacted, being unaffected by any of the provisions of the 1928 Act.

Note.—Since the above was written an Order in Council has been made, bringing the new code into operation on November 1, 1929.

Companies Act, 1929.

[19 & 20 Geo. 5. Ch. 23.]

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A.D. 1929.

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3. Stamp and signature of memorandum.
4. Restriction on alteration of memorandum.
5. Mode in which and extent to which objects of company may be altered.

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7. Regulations required in case of unlimited company or company limited by guarantee.
8. Adoption and application of Table A.
9. Printing, stamp and signature of articles.
10. Alteration of articles by special resolution.

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11. Statutory forms of memorandum and articles.

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12. Registration of memorandum and articles.
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A.D. 1929.

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CHAPTER 23.

An Act to consolidate the Companies Acts, 1908 to 1928, and certain other enactments connected with the said Acts. [10th May, 1929.] A.D. 1929.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Part I.

Incorporation of Companies and Matters incidental thereto.

Memorandum of Association.

Mode of forming incorporated company.

1.—(1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either—

(*a*) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares"); or

(*b*) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or

(*c*) A company not having any limit on the liability of its members (in this Act termed "an unlimited company").

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PART I. —*cont.*

Requirements with respect to memorandum.

2.—(1) The memorandum of every company must state—

(*a*) The name of the company, with "Limited" as the last word of the name in the case of a company limited by shares or by guarantee:

(*b*) Whether the registered office of the company is to be situate in England or in Scotland:

(*c*) The objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

(*a*) The memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(*b*) No subscriber of the memorandum may take less than one share;

(*c*) Each subscriber must write opposite to his name the number of shares he takes.

Stamp and signature of memorandum.

3. The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

Restriction on alteration of memorandum.

4. A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

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PART I. —*cont.*

Mode in which and extent to which objects of company may be altered.

5.—(1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently; or

(*b*) to attain its main purpose by new or improved means; or

(*c*) to enlarge or change the local area of its operations; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) to restrict or abandon any of the objects specified in the memorandum; or

(*f*) to sell or dispose of the whole or any part of the undertaking of the company; or

(*g*) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

(*b*) that, with respect to every creditor who in the opinion of the court is entitled to object and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court:

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

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—
Part I.
—*cont.*

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

Memorandum.

The Committee felt unable to concur with the recommendation of the Wrenbury Committee that the objects of the Company only should be stated in the Memorandum, and its powers in the Articles; or to accept a suggestion that the Act might incorporate common form clauses, with a view to shortening the

modern Memorandum, being impressed with the evidence as to the importance of a Company having a complete document to refer to in negotiations, especially abroad.

The nature of the Memorandum is explained in the leading case of Ashbury Railway Co. *v.* Riche (1875, L.R., 7 H.L. 653). Anything not in accordance with the Memorandum is *ultra vires* the Company, and cannot be rectified even by all the members. The modern Memorandum includes a great variety of objects notwithstanding the strictures passed upon it in Cotman *v.* Brougham (1918), A.C. 514, and in the case of many of the large commercial combines it would be very difficult to say what the "main purpose" was.

The Courts in considering a proposed alteration of objects are bound by Section 5 (1).

With a properly drawn modern Memorandum there should be no occasion to alter the objects; the Memorandum of older Companies may require alteration, but legal advice is generally necessary as to whether the requisite alteration is one which the Court is likely to sanction.

The Court in sanctioning alterations may attach conditions.

Articles of Association.

Articles prescribing regulation for companies.

6. There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Regulation required in case of unlimited company or company limited by guarantee

7.—(1) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(2) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered.

A.D. 1929. — Part I. —*cont.*

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Adoption and application of Table A

8.—(1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Printing, stamp, and signature of articles.

9. Articles must—

(1) be printed;

(2) be divided into paragraphs numbered consecutively;

(3) bear the same stamp as if they were contained in a deed;

(4) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England.

Alteration of articles by special resolution.

10.—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Form of Memorandum and Articles.

11. The form of—

(1) the memorandum of association of a company limited by shares;

(2) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(3) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(4) the memorandum and articles of association of an unlimited company having a share capital;

shall be respectively in accordance with the forms set out in Tables B., C., D. and E. in the First Schedule to this Act, or as near thereto as circumstances admit.

Articles of Association.

The effect of the Memorandum and Articles of Association is referred to under Section 20.

The Articles are the regulations governing the internal affairs of the Company and are freely alterable by Special Resolution, but no alteration at variance with the Memorandum, or purporting to exclude statutory rights, is of any effect.

The Company cannot contract out of this power to alter its Articles. See Punt *v.* Symonds and Co. (1903), 2 Ch. 506.

The only effective method of preventing an alteration is to hold or control a sufficient vote to defeat the passing of a Special Resolution. The Memorandum and Articles being registered are public documents and persons dealing with the Company have constructive notice of their contents, but under the Rule in Royal British Bank *v.* Turquand (1856), 6 E. and B. 327 (which has been followed in many cases), they are not concerned to inquire into what is termed the "indoor management," and are entitled to assume that acts ostensibly lawful have been regularly carried out—*e.g.*, that resolutions have been

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passed, that the Directors have been duly authorised, etc.

The partial adoption of Table A is not, in practice, convenient even when Table A is bound up for reference. In general it is better to have a special set of Articles.

For the Stock Exchange requirements as to Articles see "Rules and Regulations of the Stock Exchange," by Varley (Effingham Wilson.)

It will be noted that the Articles must be printed, and there must be sufficient copies available to comply with the duty of furnishing copies.

Registration.

Registration of memorandum and articles.

12. The memorandum and the articles, if any, shall be delivered to the registrar of companies for England or the registrar of companies for Scotland according as the registered office of the company is stated by the memorandum to be situate in England or Scotland, and the registrar shall retain and register them.

Effect of registration.

13.—(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Power of company to hold lands.

14.—(1) A company incorporated under this Act shall have power to hold lands, and as regards lands in any part of the United Kingdom without licence in mortmain:

Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the

company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land, but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit.

(2) A licence given by the Board of Trade under this section shall be in accordance with the form set out in the Second Schedule to this Act, or as near thereto as circumstances admit.

Conclusiveness of certificate of incorporation.

15.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor of the Supreme Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited.

16.—(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the registration, and those rights or liabilities may be enforced in manner provided by Part IX. of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of

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—
Part I.
—*cont.*

the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

Registration.

The duty of the Registrar is not purely ministerial, he must satisfy himself before issuing the Certificate of Incorporation (which by the Act is made "conclusive evidence") that all the requirements precedent to registration (see also Section 140), including the payment of stamps and fees, have been complied with.

The effect of registration (Section 13) is to make the members a body corporate, and to enable them as such to hold lands without licence in mortmain (Section 14).

Provisions with respect to Names of Companies.

Restriction on registration of companies by certain names.

17.—(1) No company shall be registered by a name which—

(*a*) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires; or

(*b*) contains the words "Chamber of Commerce," unless the company is a company which is to be registered under a licence granted in pursuance of the next following section of this Act without the addition of the word "Limited" to its name; or

(*c*) contains the words "Building Society."

(2) Except with the consent of the Board of Trade no company shall be registered by a name which—

(*a*) contains the words "Royal" or "Imperial" or in the opinion of the registrar suggests, or is calculated to suggest, the patronage of His Majesty or of any member of the Royal Family or connection with His Majesty's Government or any department thereof; or

(*b*) contains the words "Municipal" or "Chartered" or in the opinion of the registrar suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by Royal Charter; or

(*c*) contains the word "Co-operative."

Power to dispense with "Limited" in name of charitable and other companies.

18.—(1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the registrar of companies.

(4) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end

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—
Part I.
—*cont.*

of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

Provided that, before a licence is so revoked, the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words " Chamber of Commerce," the notice to be given as aforesaid shall include a statement of the effect of the provisions of subsection (3) of the next following section of this Act.

Change of name.

19.—(1) A company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.

(2) If a company, through inadvertence or otherwise, is, without such consent as is mentioned in paragraph (*a*) of subsection (1) of section seventeen of this Act, registered by a name which is identical with that by which a company in existence is previously registered, or which so nearly resembles that name as to be calculated to deceive, the first-mentioned company may change its name with the sanction of the registrar.

(3) Where a licence granted in pursuance of the last foregoing section of this Act to a company the name of which contains the words " Chamber of Commerce " is revoked, the company shall, within a period of six weeks from the date of the revocation or such longer period as the Board of Trade may think fit to allow, change its name to a name which does not contain those words.

If a company makes default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(4) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any

legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Names of Companies.

The further restrictions on the names which may be chosen by Companies follow upon the recommendations of the Committee. In practice it is advisable to ascertain from the Registrar whether a particular proposed name is available so far as Section 17 (1) (*a*) is concerned. It has then to be considered whether the name is so similar to that of any trade name, or the name of any existing firm, British or foreign, carrying on business and having a goodwill as to offend against the general law. Mere registration gives a Company no right to a name which it does not already possess.

For the form of injunction in such a case see Huntley and Palmer *v.* Reading Biscuit Co. (1892), 9 T.L.R. 462; see also Manchester Brewery Co. *v.* North Cheshire and Manchester Brewery Co. (1899), A.C. 83.

Under Section 18 the Board of Trade require that the proposed Memorandum and Articles be submitted to their Counsel for approval, and that any modification and addition to them be made which the Board consider necessary to ensure compliance with Section 18 (1).

General Provisions with respect to Memorandum and Articles.

Effect of memorandum and articles.

20.—(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England be of the nature of a specialty debt.

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Part I. —*cont.*

Provision as to memorandum and articles of companies limited by guarantee.

21.—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.

22. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Copies of memorandum and articles to be given to members.

23.—(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act of Parliament which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of one shilling or such less sum as the company may prescribe, and, in the case of a copy of an Act, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the

company who is in default shall be liable for each offence to a fine not exceeding one pound.

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Part I.
—*cont.*

Issued copies of memorandum to embody alterations.

24.—(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding one pound for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

General Provisions.

A very great number of reported cases deal with the subject-matter of Section 20, many of which arose in connection with alterations of the Articles. The "social contract," as it has been called, binds the members only in their capacity as members in regard to their rights and liabilities; it is also binding on the Company, which must respect those rights and enforce those liabilities, but no outsider can enforce the "social contract." See English and Colonial Produce Co. (1906), 2 Ch. 435; Northumberland Avenue Hotel (1886), 33 Ch. D. 16.

It is absolutely necessary for an outsider to have a contract with the Company independent of the Articles.

Even a member cannot enforce provisions for his benefit in a capacity other than that of member.

There have been numerous cases in which a member has been appointed to some office or employment under the Company relying on a provision in the Articles—*e.g.*, as Secretary, Solicitor, or Director.

It has been said that a Company cannot alter its Articles so as to cause a breach of contract, but the tendency has been to treat the contract (if found to be a contract) as one made referable to alterable Articles.

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The test of a valid alteration is that it is made *bonâ fide* for the good of the Company. See Sidebottom *v.* Kershaw Leese and Co. (1920), 1 Ch. 254, as to a contract of employment contained in original Articles; see Shuttleworth *v.* Cox Bros. and Co. (1927), 2 K.B. 9, C.A.

Section 22 overrules Biddulph and District Agricultural Society, Ltd. *v.* Agricultural Wholesale Society, Ltd. (1927), A.C., p. 76.

Section 23. Copies of any Act are now to be supplied at cost price.

Membership of Company.

Definition of member.

25.—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Private Companies.

Meaning of "private company."

26.—(1) For the purposes of this Act, the expression "private company" means a company which by its articles—

(*a*) restricts the right to transfer its shares; and

(*b*) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

Circumstances in which company ceases to be, or to enjoy privileges of, a private company.

27.—(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the last foregoing section of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the Third Schedule to this Act.

(2) If default is made in complying with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section twenty-eight, subsection (3) of section one hundred and ten, subsection (1) of section one hundred and thirty and paragraph (4) of section one hundred and sixty-eight of this Act, and thereupon the said provisions shall apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

Reduction of Number of Members below Legal Minimum.

Prohibition of carrying

28. If at any time the number of members of a company is reduced, in the case of a private company,

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on business with fewer than seven or, in the case of a private company, two members.

below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Contracts, &c.

Form of contracts.

29.—(1) Contracts on behalf of a company may be made as follows :—

(*a*) A contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company :

(*b*) A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied :

(*c*) A contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(4) A deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in accordance with the

provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be binding whether attested by witnesses or not.

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Bills of exchange and promissory notes.

30. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Execution of deeds abroad.

31.—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad.

32.—(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent,

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continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument, to which the seal is affixed, the date on which and the place at which it is affixed.

Authentication of Documents.

Authentication of documents.

33. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

Part II.

Share Capital and Debentures.

Prospectus.

Dating and registration of prospectus.

34.—(1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be delivered to the registrar of companies for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company, and every person who is

knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

Specific requirements as to particulars in prospectus.

35.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Fourth Schedule to this Act and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

(*a*) in connection with a bonâ fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(*b*) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding five hundred pounds.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

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(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(*c*) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part I of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

36.—(1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

Liability for statements in prospectus.

37.—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

(*a*) every person who is a director of the company at the time of the issue of the prospectus; and

(*b*) every person who has authorised himself to be named and is named in the prospectus as a

director or as having agreed to become a director either immediately or after an interval of time; and

(*c*) every person being a promoter of the company; and

(*d*) every person who has authorised the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(iv) that—

(*a*) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(*b*) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the state-

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ment, or was a correct and fair copy of or extract from the report or valuation; and

(*c*) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv) (*b*) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof con-

taining the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Document containing offer of shares or debentures for sale to be deemed prospectus.

38.—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(*a*) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section thirty-four of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of

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a company, and section thirty-five of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(*a*) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(*b*) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

Prospectus.

The Committee were generally satisfied with the existing law relating to the Prospectus, but a few important recommendations were made which have found a place in the present Act (see also under Section 355).

As a matter of convenience the specific requirements are collected together in the Fourth Schedule of the Act.

The familiar phrase to the effect that the minimum subscription has been fixed at 7 shares, but that as the whole issue has been underwritten the Directors will proceed to allotment upon the closing of the lists, must disappear and be replaced by a minimum amount calculated as in the Fourth Schedule, Part I, 5.

The requirements in Part II are new.

The very large subject of Promoters' liabilities is outside the scope of this edition, but it may be noted that in Section 37 (4) "promoter" and "expert" have been defined in the same terms as in Section 84 of the Act of 1908, and much of the existing Case Law on the subject must still apply.

As recommended by the Committee the familiar "Offer for Sale" by a third party is, in the circumstances detailed in Section 38, deemed to be a prospectus issued by the Company.

"Prospectus" is defined as before in Section 380 and the question of what is an "offer to the public" is still important (see Section 35 (3) (*a*) excluding underwriters).

The Court is by Section 35 (4) (*c*) given a discretion to relieve.

Allotment.

Prohibition of allotment unless minimum subscription received.

39.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part I. of the Fourth Schedule to this Act has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription."

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of

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five per centum per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar.

40.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar of companies for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Fifth Schedule to this Act.

(2) This section shall not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention shall be liable to a fine not exceeding one hundred pounds.

Effect of irregular allotment.

41.—(1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections of this Act, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allot-

ment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Return as to allotments.

42.—(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—

(*a*) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and

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those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) If default is made in complying with this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that, in case of default in delivering to the registrar of companies within one month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper.

Allotment.

Section 39 introduces an entirely new "minimum subscription" as noted under Prospectus, and relieves the Company from a long established liability to see to the clearing of cheques. See Burton *v.* Bevan (1908), 2 Ch. 240.

As recommended by the Committee the obligation to file a Statement in Lieu of Prospectus has been confined to Companies having a share capital, and a contravention of the Section made to have the same effect as an irregular allotment, thus removing the doubts which existed as to the effect of such an allotment. See Jubilee Cotton Mills (1924), A.C. 958.

Under Section 41 the repudiation of the allotment must be prompt, though proceedings need not be commenced within the month. See National Motor Mail Coach (1908), 2 Ch. 228. The above provisions relate to a first allotment.

The return under Section 42 has to be made in the case of every allotment. An allotment is

generally made in acceptance of the offer contained in a form of application to take shares, but sometimes where the right to apply is valuable a " provisional " allotment is made, or what is called a Letter of Rights is issued giving a Right to make application in respect of a number of shares, in either case with a form of Renunciation in favour of a nominee. In the case of securities dealt in on the Stock Exchange, there is a requirement that provision should be made for " splitting " these documents.

An allotment must be made by a duly constituted Board, and within a reasonable time.

The power to allot is a fiduciary one. See Piercy *v.* S. Miles and Co. (1920), 1 Ch. 77.

The Law of Contract relating to offer and acceptance applies generally in the matter of application and allotment, and there are numerous reported cases.

In connection with this subject the very ancient custom of " stagging " must be noticed.

A " Stag " is a person without adequate resources who makes an application, or applications (often in fictitious names), in the case of an issue likely to be successful, with no means or intention of taking up the shares, but of selling them forthwith at a premium. No method of allotment has yet been devised which can successfully eliminate him, but in the earlier days of Company promotion experts (" Stag-hunters ") were employed to detect him. See " The City " (London, Baily Brothers, 1845). The existence of a large body of the fraternity often results in an otherwise successful issue being unduly depressed by a large number of the shares being thrown on the market. The general system of making a relatively small sum payable on application encourages his activities, and in the case of large public issues there is neither the time nor the opportunity (even if the skill were available) to differentiate between his applications and those of the general public.

The various Stock Exchange requirements relating to allotment, permission to deal, and official quotations will be found in " Rules and Regulations of the Stock Exchange " (see p. 8).

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Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.

Commissions and Discounts.

43.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

(*a*) the payment of the commission is authorised by the articles; and

(*b*) the commission paid or agreed to be paid does not exceed ten per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

(*c*) the amount or rate per cent. of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(*d*) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any

property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty-five pounds.

Statement in balance sheet as to commissions and discounts.

44.—(1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Prohibition of provision of financial assistance by company for purchase of its own shares.

45.—(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Provided that nothing in this section shall be taken to prohibit—

(*a*) where the lending of money is part of the ordinary business of a company, the lending of

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money by the company in the ordinary course of its business;

(*b*) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(*c*) the making by a company of loans to persons, other than directors, bonâ fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos (*b*) and (*c*) to subsection (1) of this section shall be shown as a separate item in every balance sheet of the company.

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

Commissions and Discounts.

Underwriting commissions have now been limited to 10 per cent. of the price at which the shares are issued, as recommended by the Committee.

Section 43 (1) (*c*) "before the payment of the commission." See Andreæ *v.* Zinc Mines of Great Britain (1918), 2 K.B. 454.

(1) (*d*)—*i.e.*, the number of shares which underwriters have agreed to take firm: as to "brokerage." See Metropolitan Coal Association *v.* Scrimgeour (1895), 2 Q.B. 604.

Underwriting contracts vary so greatly, and in general are more of the nature of commercial than legal documents, that any analysis of decided cases would not be of much assistance.

The older practice of dealing with various underwriters is giving way in favour of agreements with firms of brokers or financiers.

Section 45 is the result of a recommendation by the Committee to put a stop to indirect methods of making use of a Company's money to purchase its own shares, and in effect reduce its capital in a manner not authorised. See Trevor *v.* Whitworth (1887), 12 A.C. 409.

Issue of Redeemable Preference Shares and Shares at Discount.

Power to issue redeemable preference shares.

46.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that—

(*a*) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(*b*) no such shares shall be redeemed unless they are fully paid;

(*c*) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund," a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;

(*d*) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference

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shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing subsection, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Power to issue shares at a discount.

47.—(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that—

(*a*) the issue of the shares at a discount must be authorised by resolution passed in general

meeting of the company, and must be sanctioned by the court;

(*b*) the resolution must specify the maximum rate of discount at which the shares are to be issued;

(*c*) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business;

(*d*) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

Redeemable Preference Shares and Shares at a Discount.

Sections 46 and 47 provide for two concessions recommended by the Committee on two matters upon which there has been a good deal of controversy.

Considering the conditions with which redeemable preference shares are hedged round, it appears doubtful whether, except out of the proceeds of a new issue, it will be thought practicable for a Company to make use of this concession.

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The permission granted to issue shares at a discount may be the logical result of the limitation put upon commission (Section 43), but all the suggested criteria of the circumstances in which the concession might apply have been rejected, and in spite of the protests made from time to time by the Courts, the Legislature has again seen fit to leave the Courts to solve its difficulties without any guidance. Whether the Courts will have many such applications and on what lines they will deal with them are problems which the future alone can solve.

Miscellaneous Provisions as to Share Capital.

Power of company to arrange for different amounts being paid on shares.

48. A company, if so authorised by its articles, may do any one or more of the following things—

(1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares:

(2) Accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up:

(3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Reserve liability of limited company.

49. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Power of company limited by shares to alter its share capital.

50.—(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows, that is to say, it may—

(*a*) increase its share capital by new shares of such amount as it thinks expedient;

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*c*) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(*d*) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.

51.—(1) If a company having a share capital has—

(*a*) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(*b*) converted any shares into stock; or

(*c*) re-converted stock into shares; or

(*d*) subdivided its shares or any of them; or

(*e*) redeemed any redeemable preference shares; or

(*f*) cancelled any shares, otherwise than in connection with a reduction of share capital under section fifty-five of this Act,

it shall within one month after so doing give notice thereof to the registrar of companies specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

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(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Notice of increase of share capital.

52.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within fifteen days after the passing of the resolution authorising the increase, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar of companies together with the notice a printed copy of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Power of unlimited company to provide for reserve share capital on re-registration.

53. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

(1) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(2) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Power of company to pay interest out of capital in certain cases.

54.—(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge

the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant :

Provided that—

(*a*) No such payment shall be made unless it is authorised by the articles or by special resolution :

(*b*) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade :

(*c*) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry :

(*d*) The payment shall be made only for such period as may be determined by the Board of Trade, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided :

(*e*) The rate of interest shall in no case exceed four per cent. per annum or such other rate as may for the time being be prescribed by Order in Council :

(*f*) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid :

(*g*) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate :

(*h*) Nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies. 57 & 58 Vict. c. 12.

(2) If default is made in complying with proviso (*g*) to subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

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Reduction of Share Capital.

Special resolution for reduction of share capital.

55.—(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(*b*) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(*c*) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital."

Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.

56.—(1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to the next following subsection :—

(*a*) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction :

(*b*) The court shall settle a list of creditors so entitled to object, and for that purpose shall

ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction:

(c) Where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount:—

(i) If the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) If the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors.

Order confirming reduction and powers of court on making such order.

57.—(1) The court, if satisfied, with respect to every creditor of the company who under the last foregoing section is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court makes any such order, it may—

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(*a*) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(*b*) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced," those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration of order and minute of reduction.

58.—(1) The registrar of companies, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memo-

randum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section twenty-four of this Act.

Liability of members in respect of reduced shares.

59.—(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be :

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

(*a*) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(*b*) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

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Penalty on concealment of name of creditor.

60. If any director, manager, secretary or other officer of the company—

(1) wilfully conceals the name of any creditor entitled to object to the reduction; or

(2) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(3) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of a misdemeanour.

Reduction of Share Capital.

The Committee was unable to accept the suggestion that in cases where creditors are not affected the sanction of the Court should be dispensed with, and the original code is retained almost in its entirety, but the Court is by Section 56 (3) given discretion in special circumstances to dispense with the settlement of the list of creditors entitled to object (Section 56 (2)), and by Section 57 (2) the words " and reduced " (which the evidence showed had been productive of much damage to credit, especially abroad) may be entirely dispensed with unless, *after the date of the order*, the Court specially directs that they shall be added.

The provisions of Section 40 of the Act of 1908 which had been extensively used to avoid the payment of Super Tax are repealed.

Variation of Shareholders' Rights.

Rights of holders of special classes of shares.

61.—(1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the issued shares of that class, being persons who did not consent

to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

Variation of Shareholders' Rights.

Section 61.—It was represented to the Committee that the variation of rights of a particular class—*e.g.*, preference Shareholders—was often carried out by members of that class with conflicting interests—*i.e.*, by holders of both preference and ordinary shares. Apparently impressed by this evidence the Committee made a recommendation to which effect is given in this Section, and yet again a duty has been thrown upon the Court of determining, "having regard to all

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the circumstances of the case," whether the variation (which includes abrogation) is unfairly prejudicial to the class affected. What evidence, other than that suggested to the Committee, would avail it is impossible to foreshadow, but in effect the existence of a grievance has been recognised and the Court has been given a free hand to deal with it. The legislation is on a par with much else in the Act which seems to throw the legislator's duty on the Court, without any clear indication or guide how it is to be discharged.

Transfer of Shares and Debentures, Evidence of Title, &c.

Nature of shares.

62.—(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

Transfer not to be registered except on production of instrument of transfer.

63. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by personal representative.

64. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Registration of transfer at request of transferor.

65. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notice of refusal to register transfer.

66.—(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Duties of company with respect to issue of certificates.

67.—(1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the date on which a transfer of any such shares, debentures, or debenture stock, is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

The expression "transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

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Certificate to be evidence of title.

68. A certificate, under the common seal of the company, specifying any shares held by any member, shall be primâ facie evidence of the title of the member to the shares.

Evidence of grant of probate.

69. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Issue and effect of share warrants to bearer.

70.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a "share warrant."

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

Penalty for personation of shareholder.

71. If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of felony, and shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

Offences in connection with share warrants in Scotland.

72.—(1) If in Scotland any person—

(*a*) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or

(*b*) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered;

he shall be guilty of felony and shall on conviction thereof be liable at the discretion of the court to be kept in penal servitude for life or for any term not less than three years.

(2) If in Scotland any person without lawful authority or excuse, proof whereof shall lie on him—

(*a*) engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be—

(i) a share warrant or coupon issued or made by any particular company in pursuance of this Act; or

(ii) a blank share warrant or coupon so issued or made; or

(iii) a part of such a share warrant or coupon; or

(*b*) uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively; or

(*c*) knowingly has in his custody or possession any such plate, wood, stone, or other material;

he shall be guilty of felony, and shall on conviction thereof be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

Transfer of Shares and Debentures, Evidence of Title, etc.

Section 62.—(2) A battle royal has raged over the question of the numbering of shares; on the one hand those concerned with Company management insist upon its abolition, while the London Stock

Exchange and other bodies insist upon its retention. The arguments on both sides were strongly pressed, and the Committee, following the Report of the Wrenbury Committee, decided not to recommend any change.

It now seems probable that many, at any rate, of the larger Companies will convert their fully paid shares into Stock, and that, as has already happened, dealings will take place in " units " of such Stock.

Section 63. The Articles of certain Companies in order to evade transfer stamp duty have been framed to permit a " verbal transfer " and the Revenue has been a heavy loser by this perfectly legal device. This Section puts a stop to the practice.

Sections 66 and 67. A Company has a reasonable time in which to consider whether it will register a transfer, and to make inquiries. See Ireland *v.* Hart (1902), 1 Ch. 522; Maynard *v.* Consolidated Kent Collieries (1903), 2 K.B. 121.

The Committee were impressed with the evidence as to undue delay in either notifying refusal or issuing a certificate, and this legislation imposes a time limit with a summary remedy in case of default.

In the case of an allotment it is usual to provide, when instalments are payable at intervals, that the certificate will not be issued until after the payment of the final instalment, and this condition of issue is not interfered with.

Section 69. Some Companies by their Articles required other evidence and this Section overrides any such provision. There have from time to time been various suggestions made to enable Executors and others to get probate registered with Companies more expeditiously; the delay in the case of a large Estate is serious, and sealed copies of the Probate not inexpensive. What is required is a cheap official copy which can be filed, and not merely registered by each Company. Many Companies retain the copy for some time before registering, and even with a number of sealed copies available, the present system is unsatisfactory.

Section 70. Warrants to Bearer or Bearer Shares

have never been popular in this country, and are discouraged by the Government for obvious reasons.

They are virtually essential if the Company has to place any of its capital on the Continent or abroad.

The numerous questions which arise in connection with such shares are beyond the scope of this edition.

Special Provisions as to Debentures.

Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deed.

73.—(1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection.

For the purposes of this subsection, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of sixpence for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and further shall be liable to a default fine of two pounds.

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Part II. —*cont.*

(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

Perpetual debentures.

74. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to re-issue redeemed debentures in certain cases.

75.—(1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, then—

(*a*) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

(*b*) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

(4) Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Where any debentures which have been redeemed before the date of the commencement of this Act are re-issued subsequently to that date, the re-issue of the debentures shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before the date of the commencement of this Act, if section one hundred and four of the Companies (Consolidation) Act, 1908, as originally enacted, had been enacted in this Act instead of this section. 8 Edw. 7. c. 69.

Specific performance of contracts to subscribe for debentures.

76. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Validity of debentures to bearer in Scotland.

77. It is hereby declared that, notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are valid and binding according to their terms.

Payment of certain debts out of assets subject to floating charge in

78.—(1) Where, in the case of a company registered in England, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company

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Part II.
—*cont.*
priority to claims under the charge.

is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part V of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Special Provisions as to Debentures.

Section 73 (5), provides a summary remedy for default.

Section 75. As by Sub-Section (6) the provisions of Section 104 of the Companies Act, 1908, are, in the case specified, kept alive, the question of a transfer to a nominee of the Company with the object of keeping the Debentures alive, and the deposit of Debentures to secure an account of varying amount may have to be considered.

The re-drafted Section absolves the Company from the obligation of transferring into the name of a nominee, and clarifies the existing law on this difficult subject, and introduces a requirement (3), the inclusion of particulars of Debentures available for reissue in every Balance Sheet.

Part III.

Registration of Charges.

Registration of Charges with Registrar of Companies.

Registration of charges created by

79.—(1) Subject to the provisions of this Part of this Act, every charge created after the fixed date by a company registered in England and being a charge to

which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges:—

(*a*) a charge for the purpose of securing any issue of debentures;

(*b*) a charge on uncalled share capital of the company;

(*c*) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(*d*) a charge on land, wherever situate, or any interest therein;

(*e*) a charge on book debts of the company;

(*f*) a floating charge on the undertaking or property of the company;

(*g*) a charge on calls made but not paid;

(*h*) a charge on a ship or any share in a ship;

(*i*) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could,

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—*cont.*

in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate in Scotland or Northern Ireland and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland, as the case may be, on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the registrar within

twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

(*a*) the total amount secured by the whole series; and

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(*c*) a general description of the property charged; and

(*d*) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(9) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(10) In this Part of this Act—

(*a*) the expression "charge" includes mortgage;

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(*b*) the expression "the fixed date" means in relation to the charges specified in paragraphs (*a*) to (*f*), both inclusive, of subsection (2) of this section, the first day of July, nineteen hundred and eight, and in relation to the charges specified in paragraphs (*g*) to (*i*), both inclusive, of the said subsection, the commencement of this Act.

Duty of company to register charges created by company.

80.—(1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under the last foregoing section, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) If any company makes default in sending to the registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person, who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

Duty of company to register charges existing on property acquired.

81.—(1) Where after the commencement of this Act a company registered in England acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Great Britain, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the United Kingdom shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

Register of charges to be kept by registrar of companies.

82.—(1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars:—

(*a*) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section seventy-nine of this Act:

(*b*) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Act, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.

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—*cont.*

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(4) The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register.

Endorsement of certificate of registration on debentures.

83.—(1) The company shall cause a copy of every certificate of registration given under the last foregoing section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding one hundred pounds.

Entry of satisfaction.

84. The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

Rectification of register of charges.

85. The court, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the

company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

Registration of enforcement of security.

86.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Registration of Charges.

Section 79.—(2) The charges (*g*), (*h*), and (*i*) are new.

The Committee refused to recommend the extension of charges to all the property of a Company.

(5) is new.

Sections 79 to 81 may be summarised as follows.

Section 79 (2), (*g*), (*h*), and (*i*), and Section 81 take effect from the commencement of the Act. Omission to register under Section 81 subjects to a penalty. Omission under Section 79 (2) (*g*), (*h*), and (*i*) has the same effect as omission to register any other charge which requires registration under the Act.

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Part III. —*cont.*

Section 90 extends those requirements regarding registration generally to incumbrances on property in England created or acquired by Companies incorporated outside England.

Section 91 obliges Companies generally to register within six months after the commencement of the Act all existing unsatisfied charges of the nature noted above, but failure to so register does not prejudice rights, but subjects to severe penalties.

Provisions as to Company's Register of Charges and as to Copies of Instruments creating Charges.

Copies of instruments creating charges to be kept by company.

87. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Company's register of charges.

88.—(1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

Right to inspect copies of instruments creating mortgages and charges and company's register of charges.

89.—(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the registrar of companies, and the register of charges kept in pursuance of the last foregoing section, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company

without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in England, the court may by order compel an immediate inspection of the copies or register.

Provisions as to Company's Register of Charges and as to Copies of Instruments creating Charges.

Sections 87 and 88. Note that these must now be kept at the registered office of the Company.

Section 88 now extends to all floating charges.

Section 89 defines more accurately than before the time for inspection.

A summary remedy is provided in the case of Companies registered in England.

Application of Part III. to Companies incorporated outside England.

Application of Part III to charges created, and property subject to charge acquired by company incorporated outside England.

90. The provisions of this Part of this Act shall extend to charges on property in England which are created, and to charges on property in England which is acquired, after the commencement of this Act by a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

Transitional Provision as to matters required to be registered under this Act, but not under former Acts.

Provision as to charges

91.—(1) It shall be the duty of a company within six months after the commencement of this Act to send

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PART III. —*cont.*

created, and charges on property acquired, by company before commencement of Act.

to the registrar of companies for registration the prescribed particulars of—

(*a*) any charge created by the company before the date of the commencement of this Act and remaining unsatisfied at that date, which would have been required to be registered under the provisions of paragraphs (*g*), (*h*) and (*i*) of subsection (2) of section seventy-nine of this Act or under the provisions of section ninety of this Act, if the charge had been created after the commencement of this Act; and

(*b*) any charge to which any property acquired by the company before the commencement of this Act is subject and which would have been required to be registered under the provisions of section eighty-one of this Act or under the provisions of section ninety of this Act, if the property had been acquired after the commencement of this Act.

(2) The registrar, on payment of the prescribed fee, shall enter the said particulars on the register kept by him in pursuance of this Part of this Act.

(3) If a company fails to comply with this section, the company and every director, manager, secretary or other officer of the company, or other person who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder.

(4) For the purposes of this section, the expression "company" includes a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Registered Office and Name.

Registered office of company.

92.—(1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Publication of name by company.

93.—(1) Every company—

(*a*) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(*b*) shall have its name engraven in legible characters on its seal;

(*c*) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every

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PART IV.—*cont.*

officer of the company who is in default shall be liable to a fine not exceeding five pounds, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

(3) If a company fails to comply with paragraph (*b*) or paragraph (*c*) of subsection (1) of this section, the company shall be liable to a fine not exceeding fifty pounds.

(4) If a director, manager, or officer of a company, or any person on its behalf—

(*a*) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid; or

(*b*) issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, wherein its name is not mentioned in manner aforesaid; or

(*c*) issues or authorises the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid;

he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

Management and Administration.

Section 92 (1) and (2) now imposes a time limit for these requirements, and by (3) an extended default fine is imposed.

Restrictions on Commencement of Business.

Restrictions on commencement of business.

94.—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(*b*) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(*c*) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(*a*) there has been delivered to the registrar of companies for registration a statement in lieu of prospectus; and

(*b*) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(*c*) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors in the prescribed form that paragraph (*b*) of this subsection has been complied with.

(3) The registrar of companies shall, on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be

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provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(7) Nothing in this section shall apply to—

(*a*) a private company; or

(*b*) a company registered before the first day of January, nineteen hundred and one; or

(*c*) a company registered before the first day of July, nineteen hundred and eight, which has not issued a prospectus inviting the public to subscribe for its shares.

Register of Members.

Register of members.

95.—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

(*a*) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) The date at which each person was entered in the register as a member;

(*c*) The date at which any person ceased to be a member :

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount of stock held by each member

instead of the amount of shares and the particulars relating to shares specified in paragraph (*a*) of this subsection.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Index of members of company.

96.—(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Provisions as to entries in register in relation to share warrants.

97.—(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

(*a*) The fact of the issue of the warrant;

(*b*) A statement of the shares included in the warrant, distinguishing each share by its number; and

(*c*) The date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

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(4) Until the warrant is surrendered, the particulars specified in subsection (1) of this section shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

Inspection of register of members.

98.—(1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and, except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds, and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

Power to close register.

99. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power of court to rectify register.

100.—(1) If—

(*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member;

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

Trusts not to be entered on register in England.

101. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England.

Register to be evidence.

102. The register of members shall be primâ facie evidence of any matters by this Act directed or authorised to be inserted therein.

Register of Members.

Section 96 is new and introduces questions of administration of great importance to Company officials, especially to the Registrar's Department in the case of large Companies. The language of the Section is somewhat obscure, but (2) gives the key that whatever system is adopted it must be one which enables the account of a member to be readily found, and the information up to date. The adoption of such a system by some large Companies and its non-adoption by others has created a public demand for uniformity, which this legislation secures.

Section 98. Where a right of inspection is given no reason for desiring inspection can be required. See Holland *v.* Dickson, 37 C.D. 669. No objection is generally raised to making notes, etc., but where by Statute copies are available on payment the Company may refuse to allow extracts to be made. See Balaghat Gold Mining Co. (1901), 2 K.B. 665, C.A.

The Committee were impressed with the evidence as to dilatoriness, in some cases amounting to obstruction, in complying with a request for copies, some Companies interpreting such a request as a prelude to an attack on the Directors, and in spite of protests during the passage of the Bill the time limit of 10 days has been imposed.

For the first time a summary remedy for compelling compliance has been introduced.

Section 100. It is beyond the scope of this edition to consider the various cases in which this jurisdiction has been invoked. The procedure is by Motion as an alternative to an action, and should in general only be resorted to in comparatively simple cases. The power of the Court is discretionary. Such application can be made by the Company itself. See Indo-China Steam Navigation Co. (1917), 2 Ch. 100. And as to exercise of discretion see Sussex Brick Co. (1904), 1 Ch. 598, C.A.

Section 101. The provisions of this Section have often been considered in reported cases. See Bradford Bank *v.* Briggs (1887), 12 A.C. 29; Société

Générale *v.* Walker (1886), 11 A.C. 20; W. Key and Son (1902), 1 Ch. 467.

The object of the Section was no doubt to absolve the Company from taking notice of any equitable interest and to be able to treat the registered holder as the beneficial owner of the shares registered in his name, but as regards outsiders the question of whether a Company can be affected by a notice of any trust has often arisen in connection with a "paramount lien" taken upon its shares by a Company in its Articles of Association. It is a general practice for a Company receiving notice of a third party's interests to reply to the effect that it is precluded from taking any notice of such a communication, thus providing evidence of receipt. The present state of the law makes it doubtful whether it is wise to ignore such a notice. See Mackereth *v.* Wigan Coal Co. (1916), 2 Ch. 293. The question is a highly technical one, and as this Section of the 1908 Act has been re-enacted without amendment, the new code throws no light upon it.

Dominion Register.

Power for company to keep dominion register.

103.—(1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britain, the Channel Islands, or the Isle of Man may cause to be kept in any such part of His Majesty's dominions in which it transacts business a branch register of members resident in that part (in this Act called a "dominion register").

(2) The company shall give to the registrar of companies notice of the situation of the office where any dominion register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

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(4) References to a colonial register occurring in any articles registered before the commencement of this Act shall be construed as references to a dominion register.

Regulations as to dominion register.

104.—(1) A dominion register shall be deemed to be part of the company's register of members (in this and the next following section called "the principal register").

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the dominion register is kept, and that any competent court in that part of His Majesty's dominions where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exerciseable by the court, and that the offences of refusing inspection or copies of a dominion register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal having summary criminal jurisdiction in that part of His Majesty's dominions.

(3) The company shall transmit to its registered office a copy of every entry in its dominion register as soon as may be after the entry is made, and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its dominion register.

Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a dominion register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a dominion register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a dominion register, and thereupon all entries in that register shall be transferred to some other dominion register kept by the company in the same part of His Majesty's dominions or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of dominion registers.

(7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

Stamp duties in case of shares registered in dominion registers.

105. An instrument of transfer of a share registered in a dominion register, other than such a register kept in Northern Ireland, shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from stamp duty chargeable in Great Britain.

Power to extend provisions as to dominion registers to other countries.
53 & 54 Vict. c. 37.

106.—(1) The Foreign Jurisdiction Act, 1890, shall have effect as if the last three foregoing sections of this Act were included among the enactments which by virtue of section five of that Act may be applied by Order in Council to foreign countries in which for the time being His Majesty has jurisdiction.

(2) His Majesty may by Order in Council direct that the said sections, including any enactments for the time being in force amending or substituted for those sections, shall extend, with or without any exceptions, adaptations or modifications specified in the Order, to any territories under His Majesty's protection to which those sections cannot be extended under the Foreign Jurisdiction Act, 1890, as amended by subsection (1) of this section.

His Majesty may by Order in Council revoke or vary any Order made under this subsection.

Provisions as to branch registers of dominion companies kept in the United Kingdom.

107.—(1) If by virtue of the law in force in any part of His Majesty's dominions outside Great Britain companies incorporated under that law have power to keep in Great Britain branch registers of their members resident in Great Britain, His Majesty may by Order in Council direct that sections ninety-eight and one hundred of this Act shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Great Britain as they

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apply to and in relation to the registers of companies within the meaning of this Act.

(2) For the purposes of this section, the expression "His Majesty's dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty.

Dominion Register.

The provisions of the Companies Act, 1908, Section 34, etc., relating to the keeping of a Colonial Register, and the obsolete definition of "Colony" contained therein obviously required amending, and Section 103 *et seq* make provision for a Dominion Register and a time limit is imposed for giving the Registrar notices with regard to it, with a penalty for default. There is also a penalty for not transmitting copies of every entry in the Dominion Register to the registered office of the Company, and for not keeping there a correct and up-to-date duplicate of the original register.

By Section 107 the provisions of Sections 98 and 100 may be applied to the branch registers of Dominion Companies kept in Great Britain.

By Section 105 provision is made for exemption from transfer stamp duty.

The whole of this group of Sections requires very careful study.

Annual Return.

Annual return to be made by company having a share capital.

108.—(1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of

the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

(*a*) The amount of the share capital of the company, and the number of the shares into which it is divided;

(*b*) The number of shares taken from the commencement of the company up to the date of the return;

(*c*) The amount called up on each share;

(*d*) The total amount of calls received;

(*e*) The total amount of calls unpaid;

(*f*) The total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;

(*g*) Particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;

(*h*) The total amount of the sums, if any, allowed by way of discount in respect of any debentures, since the date of the last return;

(*i*) The total number of shares forfeited;

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(*k*) The total amount of shares for which share warrants are outstanding at the date of the return;

(*l*) The total amount of share warrants issued and surrendered respectively since the date of the last return;

(*m*) The number of shares comprised in each share warrant;

(*n*) All such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company;

(*o*) The total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

(4) The return shall be in accordance with the form set out in the Sixth Schedule to this Act, or as near thereto as circumstances admit.

(5) In the case of a company keeping a dominion register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

Annual return to be made by company not having share capital.

109.—(1) Every company not having a share capital shall once at least in every calendar year make a return stating—

(*a*) the address of the registered office of the company;

(*b*) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to

be contained with respect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

General provisions as to annual returns.

110.—(1) The annual return must be contained in a separate part of the register of members, and must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the registrar of companies a copy signed by a director or by the manager or by the secretary of the company.

(2) Section ninety-eight of this Act shall apply to the annual return as it applies to the register of members.

(3) Except where the company is a private company, or is an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation:

9 Edw. 7. c. 49.

Provided that, if the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there shall be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it

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comply with the said requirements, and the fact that the said copy has been so amended shall be stated thereon.

(4) If a company fails to comply with this section or either of the two last foregoing sections of this Act, the company and every officer of the company who is in default shall be liable to a default fine.

(5) For the purposes of subsection (4) of this section, the expression "officer," and for the purposes of the last two foregoing sections of this Act the expression "director," shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Certificates to be sent by private company with annual return.

111. A private company shall send with the annual return required by section one hundred and eight of this Act a certificate signed by a director or the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (*b*) of subsection (1) of section twenty-six of this Act, are not to be included in reckoning the number of fifty.

Annual Return.

This return takes the place of the annual list and summary under Section 26 of the Companies Act, 1908.

It is to be noted that it must contain various particulars in addition to those required in the annual list and summary which it replaces—*e.g.*,

(1) If the names in the list are not in alphabetical order, a proper index must be annexed.

(2) Particulars as to Directors.

(3) A true copy of the last audited Balance Sheet (including every document required by law to be annexed) and Auditors' Report (except in case of private Company).

(4) Entries from Dominion Register (when kept).

The Sixth Schedule contains a model form.

Fourteen days instead of 7 are given for completion.

These notes do not exhaust the changes, and Section 108 must be very carefully studied with Section 110.

Section 109 is new, and prescribes an annual return for Companies not having a share capital.

The provisions of the Companies Act, 1913, as to the certificates to be sent by private Companies with the annual return are re-enacted in Section 111.

Company officials will need to pay particular attention to this group of Sections.

Meetings and Proceedings.

Annual general meeting.

112.—(1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

(2) If default is made in holding a meeting of the company in accordance with the provisions of this section, the company, and every director or manager of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds.

(3) If default is made as aforesaid, the court may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company.

Statutory meeting and statutory report.

113.—(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting."

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company.

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(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses, and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar of companies for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of

the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding fifty pounds.

(10) This section shall not apply to a private company.

Convening of extraordinary general meeting on requisition.

114.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed

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duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and seventeen of this Act.

Provisions as to meetings and votes.

115.—(1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

(*a*) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;

(*b*) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force;

(*c*) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting;

(*d*) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;

(*e*) any member elected by the members present at a meeting may be chairman thereof;

(*f*) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Representation of companies at meetings of other companies and of creditors.

116.—(1) A corporation, whether a company within the meaning of this Act or not, may—

(*a*) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(*b*) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or

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of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures, of that other company.

Provisions as to extraordinary and special resolutions.

117.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded—

(*a*) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however,

that it shall not in any case be necessary for more than five members to make the demand; or

(*b*) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen per cent. of the paid-up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of the articles of the company.

(6) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

Registration and copies of certain resolutions and agreements.

118.—(1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

(*a*) Special resolutions;

(*b*) Extraordinary resolutions;

(*c*) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for

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their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(*d*) Resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(*e*) Resolutions requiring a company to be wound up voluntarily, passed under paragraph (*a*) of subsection (1) of section two hundred and twenty-five of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(7) For the purposes of the last two foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

Resolutions passed at adjourned meetings.

119. Where after the commencement of this Act a resolution is passed at an adjourned meeting of—

(*a*) a company;

(*b*) the holders of any class of shares in a company;

(*c*) the directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Minutes of proceedings of meetings and directors.

120.—(1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

Inspection of minute books.

121.—(1) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of this Act shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Meetings and Proceedings.

Section 112. "Calendar year" means year beginning January 1 and ending December 31. See also Smedley *v.* Registrar of Companies (1919), 1 K.B. 97.

Section 113. The obligation to hold a statutory meeting has been extended to every Company limited by shares, and every Company limited by guarantee and having a share capital, but, in accordance with the recommendation of the Committee, private Companies are wholly exempt from the provisions of the Section.

As Directors only have been made liable for default their particular attention to the provisions of the Section is invited.

Section 114. It will be noted that there have been several changes in regard to requisitioned meetings.

The common practice of issuing shares with no voting rights or contingent voting rights makes the former Section (Section 66 of the Companies Act, 1908) anomalous, and the power to requisition is now in one-tenth of the total voting rights of all the members.

One-half of one-tenth may summon if the Directors are in default.

If a Special Resolution is to be passed the appropriate Notice under Section 117 must be given.

The Company, with a right over against its Directors in default, must repay the requisitionists any reasonable expenses incurred by reason of default in convening the meeting.

Section 115. This Section differs so radically from Section 67 of the Companies Act, 1908, which it replaces, that it cannot be summarised, and must be studied carefully. The provision as to the circumstances in which the intervention of the Court may be sought is new.

Section 116. This Section which is substituted for Section 68 of the Act of 1908 now includes Meetings of Creditors, and is extended to foreign Corporations.

Section 117. This very important Section makes a radical change with regard to "special resolutions."

The provisions of the former code had little to recommend them, especially in the case of opposition to a special resolution, the Notice of the first meeting was far too short, and the confirmatory meeting had little chance of reversing the position established at the first meeting, and in the case of no opposition the second meeting was a useless formality. In Committee of the House of Commons the length of Notice was extended to 21 days in deference to the case for organising opposition.

The definition of "extraordinary resolution" has been amended to clarify the position where there is abstention from voting.

The alterations made as to the demand for a computation of the majority on a poll should be carefully noted.

In matters *intra vires* the Company formalities may be waived by consent of *all the members*. See In *re* Oxted Motor Co. (1921), 3 K.B. 32; In *re* Express Engineering Co. (1920), 1 Ch., p. 466, C.A.

Section 118. This Section now brings within its scope many resolutions and agreements which previously had not to be filed by the Registrar and of which copies were not available to members.

A liquidator is now made responsible for compliance.

Section 119 overrules Neuschild *v.* British Equatorial Oil Co. (1925), Ch. 346.

Section 121 is new. From the commencement of the Act, books containing minutes of proceedings of General Meetings must be kept at the registered office of the Company, and be open to inspection by members gratis, and copies must be furnished at a scale fee.

Severe penalties for default and a summary remedy are provided.

The Section is not very clear, but the obligation apparently extends only to "General Meetings held after the commencement of this Act."

Accounts and Audit.

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Keeping of books of account.

122.—(1) Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Profit and loss account and balance sheet.

123.—(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Board of Trade, if for any special reason they think fit so to do, may, in the case of any company, extend the period of eighteen months afore-

said, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case, the offence was committed wilfully.

Contents of balance sheet.

124.—(1) Every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off—

(*a*) the preliminary expenses of the company; and

(*b*) any expenses incurred in connection with any issue of share capital or debentures: and

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(*c*) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trademarks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

(4) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance sheets.

Assets consisting of shares in subsidiary companies to be set out separately in balance sheet.

125. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first-mentioned company separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

Balance sheet to include particulars as to subsidiary companies.

126.—(1) Where a company (in this section referred to as "the holding company") holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section one hundred and twenty-nine of this Act the balance sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with in, or for

the purposes of, the accounts of the holding company, and in particular how, and to what extent,—

(*a*) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both; and

(*b*) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is

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necessary for the preparation of the statement aforesaid, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement.

Meaning of subsidiary company.

127.—(1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and—

(*a*) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other company or such as to entitle the company to more than fifty per cent. of the voting power in that other company; or

(*b*) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression "subsidiary company" in this Act means a company in the case of which the conditions of this section are satisfied.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

Accounts to contain particulars as to loans to, and remuneration of, directors, &c.

128.—(1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

(*a*) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security pro-

vided by the company to any director or officer of the company, including any such loans which were repaid during the said period; and

(*b*) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and

(*c*) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) of this section with respect to loans shall not apply—

(*a*) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business; or

(*b*) to a loan made by the company to any employee of the company if the loan does not exceed two thousand pounds and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

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(5) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Signing of balance sheet.

129.—(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

(2) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without having a copy of the auditors' report attached thereto, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

Right to receive copies of balance sheets and auditors' report

130.—(1) In the case of a company not being a private company—

(*a*) a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;

(*b*) any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to

be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

If default is made in complying with paragraph (*a*) of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if, where any person makes a demand for a document with which he is by virtue of paragraph (*b*) of this subsection entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a default fine.

Banking and certain other companies to publish periodical statement.

131.—(1) Every company, being a limited banking company or an insurance company or a deposit, provident, or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in the Seventh Schedule to this Act, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

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(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(5) For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6) This section shall not apply to any assurance company to which the provisions of the Assurance Companies Act, 1909, as to the accounts and balance sheet to be prepared annually and deposited by such a company apply, if the company complies with those provisions.

9 Edw. 7 c. 49.

Appointment and remuneration of auditors.

132.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to

have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting :

Provided that—

(*a*) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting; and

(*b*) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Board of Trade may be fixed by the Board.

Disqualification for appointment as auditor.

133.—(1) None of the following persons shall be qualified for appointment as auditor of a company—

(*a*) a director or officer of the company;

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(*b*) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company;

(*c*) a body corporate.

(2) Nothing in this section shall disqualify a body corporate from acting as auditor of a company if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as auditor of a company shall be liable to a fine not exceeding one hundred pounds.

(3) In the application of this section to Scotland the expression "body corporate" does not include a firm.

Auditors' report and auditors' right of access to books and right to attend general meetings.

134.—(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(*a*) whether or not they have obtained all the information and explanations they have required; and

(*b*) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors:

Provided that, in the case of a banking company which was registered after the fifteenth day of August, eighteen hundred and seventy-nine, and which has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Great Britain.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

Accounts and Audit.

It is, perhaps, in this branch of the law that the most far-reaching changes have been made. Although every Company has in fact, either by adopting or modifying Table A, made provision in its Articles for the keeping of Accounts, there has hitherto been no statutory obligation to keep proper Accounts at all, and in the case of liquidation of some private Companies, from the absence of properly kept Accounts, the state of affairs has been so bad as to lead the Committee to recommend an extension of the provisions of the Bankruptcy Acts to Companies in the matter of keeping proper books of Account.

Articles 103, 104, 106 and 107 of Table A of the Companies Act of 1908 have, with some modifications, been made statutory, and penal consequences will follow wilful default.

The Committee refused to recommend the adoption of any standard form of Accounts and Balance Sheet as in the case of Railway, Assurance and Banking Companies, but it will be noted that there are now new and stringent requirements as to the information which must be disclosed in Balance Sheets, with further requirements in the case of "holding Companies" relating to the aggregate profits and losses of "subsidiaries."

Although many Companies have issued Balance Sheets containing all the information which can safely be given to their members, the practice of other Companies has been the very reverse, and it is largely due to the public dissatisfaction with this state of affairs that a standard has been set to which Companies will be bound to conform. It is not possible to anticipate how this new legislation will work, but it may be surmised that those Companies which have been in the habit of keeping their share-

holders in the dark will strive to do so still within the letter of the law.

Section 122. Articles 103 and 104 of Table A (1908) with the addition of (*b*) and penal proviso.

Section 123. Articles 106 and 107 of Table A (1908) with modifications. The date up to which the Accounts are to be made has been extended to 9 and in the case of a Company with interests abroad 12 months before the meeting, with 18 months from the incorporation of the Company in case of a first account.

As it is often difficult in certain circumstances (especially with Accounts to come from abroad) to comply, the Board of Trade have been given a discretion to extend these periods.

Reserve funds are to be specifically shown on the Balance Sheet

and penal proviso.

Sections 124 to 127 contain generally the recommendations of the Committee as to the form and contents of the Balance Sheet, and are of supreme importance to all Companies, especially Companies with "subsidiaries" as defined in Section 127. No general summary can be attempted, and each section requires study.

Section 128. It was strongly pressed upon the Committee that loans to Directors and officers should be disclosed, as also the remuneration of Directors. This Section enacts the recommendations as to loans and aggregate remuneration. The disclosure is by this Section made to apply to every Director except a Managing Director, but in the case of a Director holding any other salaried employment or office with the Company, it is limited to "sums paid by way of Directors' fees."

As this Section was hotly debated in Committee of the House it has not perhaps emerged in a very satisfactory form and will probably give rise to differences of opinion. It will be noted that by Sub-Section (4) a most unpleasant and onerous duty has been cast upon the Auditors.

See further under Section 148.

Section 130. The vexed question as to the interpretation of Section 114 of the Companies Act, 1908, has been set at rest, and by (*a*) Article 108 of Table A (1908) has been made statutory, and by (*b*) every member and debenture holder may demand gratis a copy of the last Balance Sheet and Auditors' Report, and by (2) a member of a private Company may request a copy at a scale fee. In each case failure to comply within 7 days involves a default fine.

Auditors.

The first Auditors will be appointed until the first Annual General Meeting.

By Section 133 (1) (*b*) and (*c*) additional disqualifications have been enacted, but a body corporate appointed Auditors before August 3, 1928, may continue to act. Auditors are by Section 134 (3) given a right to attend Meetings and make explanations or statements. The City Equitable case drew a lot of attention to the position of Auditors, but the Committee declined to attempt to regulate their duties by Statute. As regards indemnity they have been put, as will be seen later, in the same position as Directors. It would be out of place to try and analyse the numerous cases in which the position and duties of Auditors have been commented on. The position of Auditor is in many respects an anomalous one, for though essentially appointed to look after the shareholders, in practice the Auditor's dealings are almost exclusively with the Directors and officers of the Company. Though as a rule only qualified accountants are appointed, there has been a steady refusal on the part of the Legislature to recognise any particular body or special qualifications. Possibly the new requirements as to Accounts may lead to the concentration of the Auditor's work in professional hands, for the increased responsibility for the due performance of the work is sufficiently obvious, and the dangers of default all the greater. In this connection the question as to when an Accountant or other person appointed Auditor is to be considered an " officer " of the Company, and the existing law in relation to that question, may still be of im-

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—*cont.*

portance. See London and General Bank, (1895) 2 Ch. 166, (1895) 2 Ch. 673; Kingston Cotton Mill (1896), 1 Ch. 6; Western Counties Steam Bakeries (1897), 1 Ch. 617.

From these cases it may be deduced that an Auditor regularly appointed by the Directors or the Company in General Meeting is an officer, but an accountant called in by the Directors for a casual audit is not an officer, but each case depends on its particular circumstances.

Certain expressions in the new Act—*e.g.*, in Section 134 (1) "during their tenure of office," and "whether an officer of the Company or not" in Section 152 and elsewhere—seem to show that the existing law applies.

Inspection.

Investigation of affairs of company by Board of Trade inspectors.

135.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct—

(*a*) In the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued:

(*b*) In the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued:

(*c*) In the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the Board may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one hundred pounds, for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand to the court, and the court may thereupon enquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

Proceedings on report by inspectors.

136.—(1) If from any report made under the last foregoing section it appears to the Board of Trade that any person has been guilty of any offence in relation to the company for which he is criminally liable the Board shall proceed as follows :—

(i) in the case of an offence in England, if it appears to the Board that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, the Board shall refer the matter to him;

(ii) in the case of an offence in Scotland the Board shall refer the matter to the Lord Advocate.

(2) If where any matter is referred to the Director of Public Prosecutions under this section he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance

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—*cont.*

in connection with the prosecution which they are reasonably able to give.

For the purposes of this subsection, the expression "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(3) The expenses of and incidental to an investigation under the last preceding section of this Act (in this subsection referred to as "the expenses") shall be defrayed as follows:—

(*a*) Where as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, the expenses shall be defrayed by the Board of Trade;

(*b*) In any other case the expenses shall be defrayed by the company unless the Board of Trade think proper to direct, as the Board are hereby authorised to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants:

Provided that—

(i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under the last preceding section exceeds the amount, if any, which they have under this subsection been directed by the Board to pay; and

(ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the Board.

16 & 17 Geo. 5. c. 9.

(4) Subsection (3) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926 (which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to

the winding-up of companies in England) shall have effect as if expenses to be defrayed by the Board under this section were expenses incurred by the Board under this Act in relation to the winding-up of companies in England.

Power of company to appoint inspectors.

137.—(1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Board of Trade.

Report of inspectors to be evidence.

138. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Inspection.

By Section 135 (2) the security is now limited to £100.

(5) now makes non-production or refusal to answer questions a contempt of Court.

Provision is further made for reference by the Board of Trade to the Director of Public Prosecutions and for the expenses of the investigation.

By Section 137 (3) non-production to or refusal to answer the Inspector appointed by the Company entails the same consequences.

Directors and Managers.

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—*cont*

Number of directors.

139.—(1) Every company registered after the commencement of this Act shall have at least two directors.

(2) This section shall not apply to a private company.

Restrictions on appointment or advertisement of director.

140.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(*a*) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and

(*b*) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in

the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(4) This section shall not apply to—

(*a*) a company not having a share capital; or

(*b*) a private company; or

(*c*) a company which was a private company before becoming a public company; or

(*d*) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Qualification of director or manager.

141.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

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(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Provisions as to undischarged bankrupts acting as directors.

142.—(1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was on the third day of August, nineteen hundred and twenty-eight, acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part, or been concerned since that date and the bankruptcy was prior to that date.

(2) In England the leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside Great Britain which has an established place of business within Great Britain, and the expression "official receiver" means the official receiver in bankruptcy.

(4) Subsection (1) of this section in its application to Scotland shall have effect as if the words "sequestra-

tion of his estates was awarded" were substituted for the words "he was adjudged bankrupt."

Validity of acts of directors.

143. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Register of directors.

144.—(1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say—

(*a*) in the case of an individual, his present christian name and surname, any former christian name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(*b*) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in this subsection, send to the registrar of companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

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(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

Particulars with respect to directors in trade catalogues, circulars, &c.

145.—(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars—

(*a*) his present christian name, or the initials thereof, and present surname;

(*b*) any former christian names and surnames;

(*c*) his nationality, if not British;

(*d*) his nationality of origin, if his nationality is not the nationality of origin:

Provided that, if special circumstances exist which render it in the opinion of the Board of Trade expedient that such an exemption should be granted, the Board may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to—

(*a*) every company registered under this Act or the Acts repealed by this Act unless it was registered before the twenty-third day of November, nineteen hundred and sixteen; and

(*b*) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before the said date; and

(*c*) every company licensed under the Money-lenders Act, 1927, whenever it was registered or whenever it established a place of business.

17 & 18 Geo. 5. c. 21

(3) If a company makes default in complying with this section, every director of the company shall be liable on summary conviction for each offence to a fine not exceeding five pounds, and, in the case of a director being a corporation, every director, secretary and officer of the corporation, who is knowingly a party to the default, shall be liable to a like penalty:

Provided that in England no proceedings shall be instituted under this section except by, or with the consent of, the Board of Trade.

(4) For the purposes of this section—

(*a*) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

(*b*) the expression "christian name" includes a forename;

(*c*) the expression "initials" includes a recognised abbreviation of a christian name;

(*d*) in the case of a peer or person usually known by a title different from his surname, the expression "surname" means that title;

(*e*) references to a former christian name or surname do not include—

(i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(ii) in the case of natural born British subjects, a former christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage;

(*f*) the expression "showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof.

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Part IV. —*cont.*

Limited company may have directors with unlimited liability.

146.—(1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary, if any, of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited.

147.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

Statement as to remuneration of directors to be furnished to shareholders.

148.—(1) Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or with such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in

that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is—

(*a*) a director of any other company which is in relation to the first-mentioned company a subsidiary company; or

(*b*) by virtue of the nomination, whether direct or indirect, of the company a director of any other company;

be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company:

Provided that—

(i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and

(ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax (including super-tax and sur-tax) in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

(3) If any director fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty pounds.

(4) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

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Disclosure by directors of interest in contracts.

149.—(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Provision as to payments received by directors for loss of office or on retirement.

150.—(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made as aforesaid to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do, he shall be liable to a fine not exceeding twenty-five pounds, and if the requirements of the last foregoing subsection are not complied with in relation to any such payment as is mentioned in the said subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

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Part IV. —*cont.* Provisions as to assignment of office by directors.

151. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

Directors and Managers.

Section 139 is new.

Section 140 re-enacts Section 72 of the Companies Act, 1908, with several important amendments and additions, and requires careful attention and comparison with the Section it supersedes, and cannot be summarised.

Section 142. The Committee refused to recommend an absolute prohibition of undischarged Bankrupts acting as Directors or taking part in the management of Companies, but considered that the Bankruptcy Court by which the adjudication had been made might be left to deal with such application, and this Section is the result.

Section 144. This Section replaces Section 75 of the Companies Act, 1908, and provides for an inspection of the Register.

Section 145. This elaborate Section re-enacts the provisions of the Companies Act (Particulars as to Directors), 1917, repealed by this Act, with an extended application of its provisions.

Section 148. This is new, and should be read with Section 128.

The Committee were impressed with the evidence as to the large sums often received by Directors in various ways, and especially in connection with subsidiary Companies, about which the shareholders were given little, if any, information, but they were not prepared to go beyond the recommendation which is substantially enacted in this Section. The proviso is a peculiar one, and the whole question was so hotly debated that it is not to be wondered at

that the Section in its final form is not very satisfactory.

The Section further sets at rest any question as to the legality of the payment of super tax for Directors or others; the practice, of course, is a most reprehensible one, as the tax is a graduated one payable on total income.

The definition of " emoluments " is to be noted. As the fine for default is not a serious one, and there is no summary remedy, it is quite possible that in flagrant cases Directors will risk non-compliance.

Section 149. See Transvaal Lands Co. *v.* New Belgium Land Co. (1914), 2 Ch. 488. This Section makes statutory provisions for what is usually contained in Articles of Association.

Section 150. This Section is new and is intended to provide a remedy for a practice which has been far from uncommon, of Directors receiving direct or indirect payment for loss of office on amalgamation or reconstruction without disclosing anything to the shareholders. As Sub-Section (5) declares, this remedy supplements and does not derogate from the existing law.

Section 151. This Section prevents assignment of office except with the approval of the Company.

Avoidance of Provisions in Articles or Contracts relieving Officers from Liability.

Provisions as to liability of officers and auditors.

152. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

(*a*) in relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect

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only on the expiration of a period of six months from that date; and

(*b*) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(*c*) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section three hundred and seventy-two of this Act in which relief is granted to him by the court.

Avoidance of Provisions in Articles or Contracts relieving Officers from Liability.

Section 152 must be read with Section 372.

The history of these two Sections, which are new, cannot be understood without a study of the famous City Equitable case. See (1925) Ch. 407.

The position arising out of this case was one of the most important matters which the Committee had to review, and the Committee concluded that the definition of duties of Directors and officers would be impossible, but that there was no justification for relieving them by provision in the Articles of Association or by contract from their liability under the general law for negligence, breach of duty, or breach of trust, but that as a corollary the Court's jurisdiction under Section 279 of the Companies Act, 1908, should embrace a consideration of all the circumstances relating to the appointment of a Director, officer, etc., to meet the case of Directors, officers, etc., appointed for special tasks rather than the general business of the Company (*e.g.*, technical Director).

The new code acts retrospectively upon existing provisions and contracts six months after the commencement of the Act.

Arrangements and Reconstructions.

PART IV. —*cont.*

Power to compromise with creditors and members.

153.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) of this section shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5) In this section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the

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Part IV. —*cont.* Provisions for facilitating reconstruction and amalgamation of companies.

division of shares into shares of different classes or by both those methods.

154.—(1) Where an application is made to the court under the last foregoing section of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(*d*) the dissolution, without winding up, of any transferor company;

(*e*) the provision to be made for any persons, who within such time and in such manner as the court direct, dissent from the compromise or arrangement;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (5) of the last foregoing section, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

155.—(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on

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PART IV. —*cont.*

the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company:

Provided that, where any such scheme or contract has been so approved at any time before the commencement of this Act, the court may by order, on an application made to it by the transferee company within two months after the commencement of this Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Arrangements and Reconstructions.

Section 153. This Section embodies Section 120 of the Companies Act, 1908, and Section 53 of the Act of 1928 (by which Section 45 of the Act of 1908 was repealed).

The order has to be filed with the Registrar, and until then does not take effect, and a copy has to be annexed to the Memorandum or other instrument defining the constitution of the Company.

It must be noted that " and voting " are inserted after " present " in Sub-Section (2).

Section 154 is entirely new and is not free from difficulties. It is intended to give effect to the recommendation of the Committee with regard to the avoidance of the necessity of going through the formalities of a winding up—but it applies only to " a Company within the meaning of this Act " (Section 380).

Whereas in Section 153 Company means " any Company liable to be wound up under this Act."

Amalgamation and Reconstruction are not technical terms, and the former is often applied to an arrangement by which a " holding " Company acquires a majority interest in " subsidiaries " which are not wound up.

In sanctioning a scheme the Court always requires a provision to be made for dissentients. See Bisgood *v.* Henderson's Transvaal Estates (1908), 1 Ch. 793. Reconstruction is generally accompanied by a variation in the rights of shareholders or even of debenture holders and creditors. Such schemes will generally require the services of accountants and legal advice.

The Committee's recommendations as to remission of capital duty and transfer duty on amalgamations and reconstructions have been given effect to in the Finance Act, 1927, Section 55, which is of such importance that it is set out in full in Appendix I.

Section 155 is new and gives effect to the Committee's recommendation that, subject to safeguards, an amalgamation by purchase of shares to the extent of 90 per cent. should enable the purchasing Company to acquire the balance compulsorily.

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Part V.

Winding Up.

(i) Preliminary.

The Commentary on Winding Up will be found at the end of Part V, on p. 214.

Modes of Winding Up.

Modes of winding up.

156.—(1) The winding up of a company may be either—

(*a*) by the court; or

(*b*) voluntary; or

(*c*) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

Liability as contributories of present and past members.

157.—(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the following qualifications:—

(*a*) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up:

(*b*) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member:

(*c*) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(*d*) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(*e*) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up:

(*f*) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract:

(*g*) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that—

(*a*) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up:

(*b*) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:

(*c*) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

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(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

158. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

159. The liability of a contributory shall create a debt (in England of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member.

160.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the court thinks fit.

(3) If in England the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

161. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall

be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as to married women. 45 & 46 Vict. c. 75. 44 & 45 Vict. c. 21.

162.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

(ii) Winding Up by the Court.

Jurisdiction.

Jurisdiction to wind up companies registered in England.

163.—(1) The High Court shall have jurisdiction to wind up any company registered in England.

(2) In the case of a company whose registered office is situate within the jurisdiction of the Chancery Court of the County Palatine of Lancaster or the Chancery Court of the County Palatine of Durham, the palatine court shall have concurrent jurisdiction with the High Court to wind up the company.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the county court of the district in which the registered office of the company is situate

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shall, subject to the provisions of this section, have concurrent jurisdiction with the High Court to wind up the company.

(4) Where a company is formed for working mines within the stannaries and is not shown to be working mines beyond the limits of the stannaries or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, the court exercising the stannaries jurisdiction shall, whatever may be the amount of the capital of the company and wherever the registered office of the company is situate, have concurrent jurisdiction with the High Court to wind up the company.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may revoke or vary any such order.

In exercising his powers under this section, the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

59 & 60 Vict. c. 45.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding-up.

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Conduct of winding up business in High Court in England.
15 & 16 Geo. 5. c. 49.

164.—(1) Subject to any order made under section fifty-seven or section sixty A. of the Supreme Court of Judicature (Consolidation) Act, 1925, and without prejudice to the power to make orders of transfer under that Act, the jurisdiction of the High Court to wind up companies in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign for the purpose or by the judge or judges for the time being exercising the bankruptcy jurisdiction of the High Court.

(2) The Lord Chancellor may give directions as aforesaid either generally or with respect to any specified classes of cases.

(3) Provision may be made by general rules for regulating the exercise of the said jurisdiction of the High Court under this Act.

Transfer of proceedings from one court to another and statement of case by county court.

165.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court,

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and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Jurisdiction to wind up companies in Scotland.

166.—(1) The Court of Session shall have jurisdiction to wind up any company registered in Scotland.

(2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may, subject to the provisions of this Act, be exercised by the Lord Ordinary on the Bills.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the sheriff court of the sheriffdom in which the registered office of the company is situate shall have concurrent jurisdiction with the Court of Session to wind up the company:

Provided that—

(*a*) it shall be lawful for the Court of Session, if it appears to the court having regard to the amount of the assets of the company expedient to do so, to remit to any sheriff court any petition presented to the Court of Session for winding up any such company, or to require any such petition presented to a sheriff court to be remitted to the Court of Session; and

(*b*) it shall be lawful for the Court of Session to require that any such petition as aforesaid presented to one sheriff court be remitted to another sheriff court; and

(*c*) in a winding up in the sheriff court it shall be lawful for the sheriff court to submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.

(4) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Power in Scotland to remit winding up to Lord Ordinary.

167. Where the Court of Session makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

Cases in which Company may be wound up by Court.

Circumstances in which company may be wound up by court.

168. A company may be wound up by the court if—

(1) the company has by special resolution resolved that the company be wound up by the court:

(2) default is made in delivering the statutory report to the registrar or in holding the statutory meeting:

(3) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(4) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven:

(5) the company is unable to pay its debts:

(6) the court is of opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts.

169. A company shall be deemed to be unable to pay its debts—

(1) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

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(2) if, in England or Northern Ireland, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(3) if, in Scotland, the inducia of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or

(4) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects thereof.

Provisions as to applications for winding up.

170.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately :

Provided that—

(*a*) A contributory shall not be entitled to present a winding-up petition unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(*b*) A winding-up petition shall not, if the ground of the petition is default in delivering the

statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(*c*) The court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a primâ facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in proviso (*a*) (ii) to subsection (1) of this section been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Powers of court on hearing petition.

171.—(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

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—*cont.*

(2) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may—

(*a*) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(*b*) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Power to stay or restrain proceedings against company.

172. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(*a*) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(*b*) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, &c. after commencement of winding up.

173. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of attachments, &c. in case of English company and in case of effects in England of Scottish company.

174.—(1) Where any company registered in England is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in

England, apply in the case of a company registered in Scotland as it applies in the case of a company registered in England.

Commencement of Winding Up.

Commencement of winding up by the court.

175.—(1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Consequences of Winding-up Order.

Copy of order to be forwarded to registrar.

176. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Actions stayed on winding-up order.

177. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Effect of winding-up order.

178. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Official Receiver in English Winding Up.

Official receiver in bankruptcy to be official receiver for winding-up purposes.

179.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" means the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official

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receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board.

(2) Any such officer shall for the purpose of his duties under this Act be styled "the official receiver."

Appointment of official receiver by Court in certain cases.

180. If in the case of the winding up of any company by the court in England it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the person who would by virtue of the last foregoing section of this Act be the official receiver, should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

Statement of company's affairs to be submitted to official receiver.

181.—(1) Where the court in England has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

(*a*) who are or have been directors or officers of the company;

(*b*) who have taken part in the formation of the company at any time within one year before the relevant date;

(*c*) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;

(*d*) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expression "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

Report by official receiver.

182.—(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the

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last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

(*a*) as to the amount of capital issued. subscribed, and paid up, and the estimated amount of assets and liabilities; and

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in sections two hundred and sixteen and two hundred and seventeen of this Act.

Liquidators.

Power of court to appoint liquidators.

183.—For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Appointment and powers of provisional liquidator.

184.—(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding up petition.

(2) Where the proceedings are in England, the appointment of a provisional liquidator may be made at any time before the making of a winding up order, and either the official receiver or any other fit person may be appointed.

(3) Where the proceedings are in Scotland, the appointment of a provisional liquidator may be made at any time before the first appointment of liquidators.

(4) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment, style &c. of liquidators in England.

185. The following provisions with respect to liquidators shall have effect on a winding-up order being made in England:—

(1) The official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such:

(2) The official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver:

(3) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit:

(4) In a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company:

(5) The official receiver shall by virtue of his office be the liquidator during any vacancy:

(6) A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator," and, where the official receiver is liquidator, by the style of "the official receiver and liquidator," of the particular company in respect of which he is appointed, and not by his individual name.

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Provisions where person other than official receiver is appointed liquidator.

186. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator, that person—

(1) shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade:

(2) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Provisions as to liquidators in Scotland.

187. The following provisions with respect to the liquidators shall have effect in a winding up by the court in Scotland:—

(1) The court may determine whether any and what security is to be given by a liquidator on his appointment:

(2) A liquidator shall be described by the style of "the official liquidator" of the particular company in respect of which he is appointed and not by his individual name:

(3) Where an order has been made for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

General provisions as to liquidators.

188.—(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distri-

buted among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section two hundred and seventy-eight of this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

189.—(1) Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

Vesting of property of company in liquidator.

190. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Powers of liquidator.

191.—(1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection—

(*a*) to bring or defend any action or other legal proceeding in the name and on behalf of the company:

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(*b*) to carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof:

(*c*) to appoint a solicitor or law agent to assist him in the performance of his duties:

(*d*) to pay any classes of creditors in full:

(*e*) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable:

(*f*) to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power—

(*a*) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(*b*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal:

(*c*) to prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insol-

vency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors:

(*d*) to draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business:

(*e*) to raise on the security of the assets of the company any money requisite:

(*f*) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

(*g*) to appoint an agent to do any business which the liquidator is unable to do himself:

(*h*) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland, the court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (*a*) or paragraph (*b*) of subsection (1) of this section without the sanction or intervention of the court.

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(5) In a winding up by the court in Scotland, the liquidator shall, subject to general rules, have the same powers as a trustee on a bankrupt estate.

Exercise and control of liquidator's powers in England.

192.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by liquidator in England.

193. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books,

Payments of liquidator in England into bank.

194.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts in England.

195.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

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(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Control of Board of Trade over liquidators in England.

196.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Release of liquidators in England.

197.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly

protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Committees of Inspection.

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

198.—(1) When a winding up order has been made by the court in England, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

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(2) When a winding-up order has been made by the court in Scotland, the liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be the members of the committee if appointed:

Provided that, where the winding-up order has been made on the ground that the company is unable to pay its debts, it shall not be necessary for the liquidator to summon a meeting of the contributories.

(3) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

199.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court:

Provided that, where in Scotland a winding up order has been made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of Board of Trade in England where no committee of inspection.

200. Where in the case of a winding up in England there is no committee of inspection, the Board of Trade may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

Additional powers of committee of inspection in Scotland.

201. In the case of a winding up in Scotland, the committee of inspection shall, in addition to the powers and duties conferred and imposed on it by this Act, have such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on committees of inspection by general rules.

General Powers of Court in case of Winding-up by Court.

Power to stay winding up.

202.—(1) The court may at any time after an order for winding up, on the application either of the liquidator, or the official receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

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(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

Settlement of list of contributories and application of assets.

203.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Delivery of property to liquidator.

204. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is primâ facie entitled.

Payment of debts due by contributory to company and extent to which set off allowed.

205.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may—

(*a*) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any

independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(*b*) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

206.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into Bank of moneys due to company.

207.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

208.—(1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

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(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings, except proceedings in Scotland against the heritable estate of a deceased contributory, in which case the order shall be only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

Appointment in England of special manager.

209.—(1) Where in proceedings in England the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power to exclude creditors not proving in time.

210. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

211. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories.

212. The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Power to order costs of winding up to be paid out of assets.

213. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges,

and expenses incurred in the winding up in such order of priority as the court thinks just.

Power to summon persons suspected of having property of company.

214.—(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

Attendance of director of company at meetings of creditors, &c. in Scotland.

215. In the winding up by the court of a company registered in Scotland, the court shall have power to require the attendance of any director or other officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

Power in England to order public examination of promoters, directors, &c.

216.—(1) Where an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in

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relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in

evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a Palatine Court, before a registrar of that court, and the powers of the court under this section may be exercised by the person before whom the examination is held.

Power in England to restrain fraudulent persons from managing companies.

217.—(1) Where an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the official receiver, order that that person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the report as may be specified in the order.

(2) The official receiver shall, where he intends to make an application under the last foregoing subsection, give not less than ten days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the official receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the court to any matters which appear to him to be relevant, and on any such application the official receiver may himself give evidence or call witnesses.

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(4) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

Power to arrest absconding contributory.

218. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

Powers of court cumulative.

219. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to liquidator of certain powers of court in England.

220. Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act in respect of the following matters—

(1) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(2) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(3) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(4) the making of calls;

(5) the fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of company.

221.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall within fourteen days from the date thereof be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

Enforcement of and Appeal from Orders.

Order for calls on contributories in Scotland.

222.—(1) Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the said amount became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest.

(2) Any such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

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Enforcement throughout United Kingdom of orders made in winding up.

223.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Northern Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Northern Ireland and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Northern Ireland by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

Appeals from orders in Scotland.

224.—(1) Subject to the provisions of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) In regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation—

(*a*) no order or judgment under the provisions of this Act specified in the First Part of the Eighth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and

(*b*) every other order or judgment (except as hereinafter mentioned) shall be subject to review only

by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Eighth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) In regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding up has been remitted, any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

(iii) Voluntary Winding Up.

Resolutions for, and commencement of Voluntary Winding Up.

225.—(1) A company may be wound up voluntarily— Circumstances in which company may be wound up voluntarily.

(*a*) When the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

(*b*) If the company resolves by special resolution that the company be wound up voluntarily:

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(*c*) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression "a resolution for "voluntary winding up" means a resolution passed under any of the provisions of subsection (1) of this section.

Notice of resolution to wind up voluntarily.

226.—(1) When a company has passed a resolution for voluntary winding up, it shall, within seven day after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

227. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of Voluntary Winding Up.

Effect of voluntary winding up on business and status of company.

228. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Avoidance of transfers, &c., after commencement of voluntary winding up.

229. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Declaration of Solvency.

Statutory declaration of solvency in case of proposal to

230.—(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the

directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless it is delivered to the registrar of companies for registration before the date mentioned in subsection (1) of this section.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up," and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up."

Provisions applicable to a Members' Voluntary Winding Up.

Provisions applicable to a members' winding up.

231. The provisions contained in the five sections of this Act next following shall apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

232.—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

Power to fill vacancy in office of liquidator.

233.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

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(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Power of liquidator to accept shares, &c. as consideration for sale of property of company.

234.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before

or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding-up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

8 & 9 Vict. c. 16.

8 & 9 Vict. c. 17.

Duty of liquidator to call general meeting at end of each year.

235.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

236.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

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(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provisions applicable to a Creditors' Voluntary Winding Up.

Provisions applicable to a creditors' winding up.

237. The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors.

238.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary

winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(*a*) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(*b*) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(*a*) by the company in complying with subsections (1) and (2) of this section;

(*b*) by the directors of the company in complying with subsection (3) of this section;

(*c*) by any director of the company in complying with subsection (4) of this section;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

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Appointment of liquidator.

239. The creditors and the company at their respective meetings mentioned in the last foregoing section of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection.

240.—(1) The creditors at the meeting to be held in pursuance of section two hundred and thirty-eight of this Act or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of sections one hundred and ninety-nine (except subsection (1)) and two hundred

and one of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Fixing of liquidators' remuneration and cesser of directors' powers.

241.—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator.

242. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

Application of s. 234 to a creditors' voluntary winding up.

243. The provisions of section two hundred and thirty-four of this Act shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year.

244—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

245.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for

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the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provisions applicable to every Voluntary Winding Up.

Provisions applicable to every voluntary winding up.

246. The provisions contained in the nine sections of this Act next following shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Distribution of property of company.

247. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up.

248.—(1) The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section one hundred and ninety-one of this Act to a liquidator in a winding up by the court:

(*b*) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court:

(*c*) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be primâ facie evidence of the liability of the persons named therein to be contributories:

(*d*) exercise the power of the court of making calls:

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

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(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

Power of court to appoint and remove liquidator in voluntary winding up.

249.—(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

250.—(1) The liquidator shall, within twenty-one days after his appointment, deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Arrangement when binding on creditors.

251.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power to apply to court to have questions determined or powers exercised.

252.—(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

253.—(1) If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose. Power of court in Scotland to stay proceedings against company.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the commencement of this Act with respect to the staying of proceedings against a company registered in England and in course of being wound up.

254. All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims. Costs of voluntary winding up.

255. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up. Saving for rights of creditors and contributories.

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT.

256. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions, as the court thinks just. Power to order winding up subject to supervision.

257. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court. Effect of petition for winding up subject to supervision.

258. A winding up subject to the supervision of the court shall, for the purposes of sections one hundred and seventy-three and one hundred and seventy-four of this Act, be deemed to be a winding up by the court. Application of ss. 173 and 174 to winding up subject to supervision.

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Power of court to appoint or remove liquidators.

259.—(1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.

260.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section one hundred and ninety-one of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditor's voluntary winding up, with the sanction of either the court or the committee of inspection.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act which are set out in the Ninth Schedule to this Act, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that where the order for winding up subject to supervision was made in relation to a creditor's voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section one hundred and ninety-nine (except subsection (1) thereof) and section two hundred and one of this Act, except in so far as the operation of those sections is excluded in a voluntary winding up by general rules.

(v) Provisions applicable to every Mode of Winding Up.

Proof and Ranking of Claims.

Debts of all descriptions to be proved.

261. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent English companies.

262. In the winding up of an insolvent company registered in England the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Ranking of claims in Scotland. 3 & 4 Geo. 5. c. 20.

263. In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act, 1913, that is to say,

(*a*) the provisions of sections forty-five to sixty-two regarding voting and ranking for payment of dividends;

(*b*) sections ninety-six and one hundred and five, which respectively relate to the reckoning of majorities and to the interruption of prescription;

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a bankrupt's estate, with the substitution of references to winding up for references to sequestration, of references to the court for references to the sheriff, of references to the liquidator for references to the trustee, and of references to the

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Preferential payments.

company for references to the bankrupt, and with any other necessary modifications.

264.—(1) In a winding up there shall be paid in priority to all other debts—

(*a*) All parochial or other local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

(*b*) All wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date, not exceeding fifty pounds;

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months next before the relevant date:

Provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date;

(*d*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section seven of the Workmen's Compensation Act, 1925, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act accrued before the relevant date;

15 & 16 Geo. 5. c. 84.

(*e*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company,

all amounts due in respect of contributions payable during the twelve months next before the relevant date by the company as the employer of any persons under either—

(i) the National Health Insurance Acts, 1924 to 1928; or

(ii) the Widows', Orphans' and Old Age Contributory Pensions Act, 1925; or 15 & 16 Geo. 5. c. 70.

(iii) the Unemployment Insurance Acts, 1920 to 1929.

(2) Where any compensation under the Workmen's Compensation Act, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (*d*) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(3) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(4) The foregoing debts shall—

(*a*) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(*b*) In the case of a company registered in England, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding

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up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by paragraph (*e*) of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

(6) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(7) In this section the expression "the relevant date" means—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(*b*) in any other case, the date of the commencement of the winding up.

Effect of Winding Up on antecedent and other Transactions.

Fraudulent preference.

265.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

(4) In the application to Scotland of this section, the expression "fraudulent preference" includes any alienation or preference which is voidable by statute or at common law on the ground of insolvency or notour bankruptcy, and the expression "bankruptcy petition" means petition for sequestration.

Effect of floating charge.

266. Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

Disclaimer of onerous property in case of company wound up in England.

267.—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed,

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but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person

therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or

(*b*) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

(8) This section shall not apply in the case of a winding up in Scotland.

Restriction of rights of creditor as to execution or attachment in case of company being wound up in England.

268.—(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

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Provided that—

(*a*) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and

(*b*) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

Duties of sheriff as to goods taken in execution.

269.—(1) Where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods

of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

Effect of diligence within 60 days of winding up in case of Scottish company, and in case of effects in Scotland of English company.

270.—(1) In the winding up of a company registered in Scotland, the following provisions shall have effect:—

(*a*) The winding up shall, as at the date of the commencement thereof, be equivalent to an arrestment in execution and decree of furthcoming, and to an executed or completed poinding, and no arrestment or poinding of the funds or effects of the company executed on or after the sixtieth day prior to that date shall be effectual, and those funds or effects or the proceeds of those effects if sold shall be made furthcoming to the liquidator:

Provided that any arrester or poinder before that date, who is thus deprived of the benefit of his diligence shall have preference out of those funds or effects for the expense bona fide incurred by him in such diligence:

(*b*) The winding up shall, as at the date aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said date, subject to such preferable heritable rights

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and securities as existed at the said date and are valid and unchallengeable, and the right to poind the ground hereinafter provided:

(*c*) The provisions of sections one hundred and eight to one hundred and thirteen and of section one hundred and sixteen of the Bankruptcy (Scotland) Act, 1913, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator," and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland:

(*d*) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator:

Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the date aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in Scotland, apply in the case of a company registered in England as it applies in the case of a company registered in Scotland.

Offences antecedent to or in course of Winding Up.

Offences by officers of companies in liquidation.

271.—(1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be

wound up by the court or subsequently passes a resolution for voluntary winding up—

(*a*) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(*b*) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(*c*) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(*d*) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company; or

(*e*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards; or

(*f*) makes any material omission in any statement relating to the affairs of the company; or

(*g*) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(*h*) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

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(*i*) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(*j*) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(*k*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or

(*l*) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(*m*) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(*n*) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(*o*) within twelve months next before the commencement of the winding up or at any time

thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (*m*), (*n*) and (*o*) of this subsection, be liable on conviction on indictment to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (*a*), (*b*), (*c*), (*d*), (*f*), (*n*) and (*o*), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (*h*), (*i*) and (*j*), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (*o*) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable—

(*a*) in England to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour;

(*b*) in Scotland on conviction on indictment to penal servitude for a period not exceeding seven years,

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or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

(3) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books.

272. If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Frauds by officers of companies which have gone into liquidation.

273. If any person, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(*a*) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(*b*) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months.

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Liability where proper accounts not kept.

274.—(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year, or on summary conviction to imprisonment for a term not exceeding six months.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Responsibility of directors for fraudulent trading.

275.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the

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liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression "assignee" includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term not exceeding one year.

(4) The court may, in the case of any person in respect of whom a declaration has been made under subsection (1) of this section, or who has been convicted of an offence under subsection (3) of this section, order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

In this subsection the expression "the court" in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted, as the case may be, and in relation to the granting of leave means any court having jurisdiction to wind up the company.

(5) For the purposes of this section, the expresssion "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made in the case of a winding up in England, the declaration shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section one of the Bankruptcy Act, 1914.

4 & 5 Geo. 5. c. 59.

(7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4) of this section, and on the hearing of an application under that subsection or under subsection (1) of this section the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

Power of court to assess damages against delinquent directors, &c.

276.—(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the

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misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section one of the Bankruptcy Act, 1914.

Prosecution of delinquent officers and members of company.

277.—(1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator—

(*a*) in the case of a winding up in England either himself to prosecute the offender or to refer the matter to the Director of Public Prosecutions;

(*b*) in the case of a winding up in Scotland to refer the matter to the Lord Advocate.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate, and shall furnish to the Director or Lord Advocate, as the case may be, such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as they respectively may require.

(3) Where any report is made under the last foregoing subsection to the Director of Public Prosecutions or Lord Advocate, he may, if he thinks fit, refer the matter to the Board of Trade for further enquiry, and the Board

shall thereupon investigate the matter and may if they think it expedient, apply to the court for an order conferring on the Board or any person designated by the Board for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If on any report to the Director of Public Prosecutions under subsection (2) of this section it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions or the Lord Advocate under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(6) If, where any matter is reported or referred to the Director of Public Prosecutions or Lord Advocate under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

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(7) If any person fails or neglects to give assistance in manner required by subsection (6) of this section, the court may, on the application of the Director of Public Prosecutions or Lord Advocate, as the case may be, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(8) The Board of Trade, with the consent of the Treasury, may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed as expenses incurred by the Board under this Act in relation to the winding up of companies in England and subsection (3) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926, shall apply accordingly.

Subject to any direction under this subsection and to any mortgages or charges on the assets of the company and any debts to which priority is given by section two hundred and sixty-four of this Act, all such costs and expenses as aforesaid shall be payable out of those assets in priority to all other liabilities payable thereout.

Supplementary Provisions as to Winding up.

Disqualification for appointment as liquidator.

278.—(1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding one hundred pounds.

(3) In the application of this section to Scotland the expression "body corporate" does not include a firm.

Enforcement of duty of liquidator to make returns, &c.

279.—(1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a company is in liquidation.

280.—(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default, shall be liable to a fine of twenty pounds.

Exemption of certain documents from stamp duty on winding up of companies.

281.—(1) In the case of a winding up by the court of a company registered in England, or of a creditors' voluntary winding up of such a company—

(*a*) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

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(*b*) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding-up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In the case of such a winding up as aforesaid of a company registered in Scotland,

(*a*) every conveyance relating solely to property which forms part of the assets of the company and which, after the execution of the conveyance, is or remains the property of the company for the benefit of its creditors; and

(*b*) every power of attorney, commission, factory, oath, affidavit, articles of roup or sale, submission, decree arbitral, and every other instrument and writing whatsoever relating solely to the property of the company; and

(*c*) every deed or writing forming a part of the proceedings in the winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(3) In subsection (1) of this section the expression "assurance" includes deed, conveyance, assignment and surrender, and in subsection (2) of this section the expression "conveyance" includes assignation, instrument, discharge, writing and deed.

Books of company to be evidence.

282. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be primâ facie evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of company.

283.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say :—

(*a*) In the case of a winding up by, or subject to the supervision of, the court in such way as the court directs;

(*b*) In the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors'

voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Board of Trade to prevent, for such period (not exceeding five years from the dissolution of the company) as the Board think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Board, and to appeal to the court from any direction which may be given by the Board in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Board thereunder, he shall be liable to a fine not exceeding one hundred pounds.

Information as to pending liquidations

284.—(1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the

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liquidator or of the official receiver, be punishable accordingly.

Unclaimed assets in England to be paid to Companies Liquidation Account.

285.—(1) If, where a company is being wound up in England, it appears either from any statement sent to the registrar under the last foregoing section or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the said money to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exerciseable under section one hundred and fifty-three of the Bankruptcy Act, 1914, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(3) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment thereof, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Board of Trade in respect of a claim made in pursuance of this section may appeal to the High Court.

Unclaimed dividends, &c. in Scotland to be lodged in bank.

286. When a company registered in Scotland has been wound up, and is about to be dissolved, the liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts therefor shall be transmitted to the Accountant of Court, and the provisions of section one hundred and fifty-three of the Bankruptcy (Scotland) Act, 1913, so far as consistent with this Act, shall, with

any necessary modifications, apply to sums lodged in a bank in pursuance of this section in like manner as they apply to sums deposited in pursuance of that enactment.

Resolutions passed at adjourned meetings of creditors and contributories.

287. Where after the commencement of this Act a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court.

Meetings to ascertain wishes of creditors or contributories.

288.—(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Judicial notice of signature of officers.

289. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court or of a county court in England, or of the Court of Session or of a sheriff court in Scotland, or of the High Court in Northern Ireland, and also of the official seal or stamp of the several offices of the High Court in England or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

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Special commission for receiving evidence.

290.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and in Northern Ireland the judge exercising the bankruptcy jurisdiction of the High Court and county court judges and recorders, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in England or Scotland, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of county courts, judge exercising the said bankruptcy jurisdiction, county court judge, recorder or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may order examination of persons in Scotland.

291.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory.

(2) The order or commission to take the examination aforesaid shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(3) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall

transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(4) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(5) The sheriff shall be entitled to such fees, and the witness shall be entitled to such allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(6) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Costs of application for leave to proceed against company being wound up in Scotland.

292.—(1) Where any petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of such petition or application shall, unless the court otherwise directs, be added to the amount of the claim of the petitioner or applicant against the company.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the commencement of this Act with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England.

Affidavits, &c. in United Kingdom and dominions.

293.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in the United Kingdom, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

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(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Provisions as to Dissolution.

Power of court to declare dissolution of company void.

294.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the registrar of companies for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Registrar may strike defunct company off register.

295.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after

sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved :

Provided that—

(*a*) the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(*b*) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the

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order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Property of dissolved company to be bona vacantia.

296. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections of this Act, be deemed to be bona vacantia and shall accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

297. When several companies are in course of liquidation by or under the supervision of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the

amount thereof shall be applied to such payment in due course :

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

Preferential payments in stannaries cases.

298. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made :—

(1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser or secretary;

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts :

(3) The following debts, that is to say :—

(*a*) wages of any miner, artizan, or labourer, unpaid at the commencement of the winding up; and

(*b*) all such amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1925, payable to a miner or the dependants of a miner as are given priority by paragraph (*d*) of subsection (1) of section two hundred and sixty-four of this Act; and

(*c*) all such amounts due in respect of contributions payable in respect of a miner under the enactments mentioned in paragraph (*e*) of the said subsection (1) as are given priority by that paragraph;

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—*cont.*

shall be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary.

(4) Subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the debts to be paid in priority under the last foregoing paragraph, together with interest thereon at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof, and as soon as the said sum has been so advanced, the said debts shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

(5) The provision giving a right of priority to a person who has advanced money for the making of payments on account of wages and salaries shall have effect subject to the modifications contained in this section.

Provisions as to mine club funds.

299.—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the winding up is a voluntary winding up, any person claiming to be entitled to any such contributions or fund shall have the same right as the liquidator of applying to the court for directions, or to determine any question arising in the matter.

Central Accounts.

Companies Liquidation Account.

300.—(1) An account, to be called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds on general account.

301.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid into the Bankruptcy and Companies Winding-up (Fees) Account established under the Economy (Miscellaneous Provisions) Act, 1926.

Separate accounts of particular estates.

302.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the

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Part V. —*cont.*

committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

Officers.

Officers and remuneration.

303.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

Returns by officers in English winding up.

304. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times, and in such manner and form, as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Rules and Fees.

General rules and fees for winding up.

305.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England, and the Court of Session may by Act of Sederunt make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in Scotland.

(2) All rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for:

Provided that in fixing the fees aforesaid regard shall be had to the provisions of section fourteen of the Economy (Miscellaneous Provisions) Act, 1926.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

Winding Up.

Jurisdiction.

Section 163. In accordance with the Committee's recommendation, the High Court has been given concurrent jurisdiction with the other Courts, and has jurisdiction to wind up any Company registered in England.

Sections 166 and 167 make important amendments in the jurisdiction to wind up Companies in Scotland, and give the Court of Session jurisdiction to wind up any Company registered in Scotland.

Section 174, Sub-Section (2), is new.

Section 175. These provisions as to the commencement of the winding up are new.

Section 177. "Or a provisional liquidator appointed" is new.

Section 180 is new.

Section 181 re-enacts Section 194 of the Companies Act, 1908, with amendments. The Court can now dispense with the statement.

Section 182 re-enacts Section 148 of the Companies Act, 1908, with important amendments in connection with the Report of the Official Receiver.

Section 190 is new, giving the Court power, on the application of the liquidator, to make a vesting order.

Section 198. In Scotland, the liquidator is substituted for the official receiver. Where the Company is insolvent a meeting of contributories can be dispensed with.

Sections 199 to 201. Some of the provisions relating to Committees of Inspection in these Sections are new.

Section 202, Sub-Section (2), is new.

Section 203 now gives power to the Court to dispense with a list.

Section 214. "Concerning the *promotion formation*" is new.

Section 215 is new.

Section 216 re-enacts Section 175 of the Companies Act, 1908, with amendments. The Official Receiver must attend on any application for exculpation and may give evidence or call witnesses.

Section 217. This is new, and follows upon the recommendation of the Committee in respect of fraudulent trading (see further Sections 271 *et seq.*).

Section 226. A time limit of 7 days and a default fine have been imposed.

Section 230. This is new. Where the declaration has been delivered to the Registrar the voluntary winding up is classed as a "members'," otherwise it will be a "creditors'."

The Committee were impressed with the evidence as to the small control which the creditors could exercise in the case of the voluntary winding up of a Company unable to pay its debts under the existing law.

Sections 231 to 236 lay down the new code in respect of a "members' voluntary winding up."

Section 234. The words "whether a Company within the meaning of this Act or not" were inserted to enable the transferee Company to be a foreign Company. See Thomas *v.* United Butter Companies (1909), 2 Ch. 484.

Section 235. A penalty is provided.

Section 236, Sub-Section (3), is new.

Sections 237 to 245 lay down the new code in respect of a "creditors' voluntary winding up," and are very largely new legislation to give effect to the Committee's recommendations that where a Company is unable to pay its creditors in full, the liquidation should be controlled by the creditors, and not by the contributories.

Large powers are given to the creditors' meeting, which has control over the appointment of the liquidator. It may appoint a Committee of Inspection, which may fix the liquidator's remuneration, and generally control the course of the liquidation.

The liquidator is bound to call an annual meeting of the creditors.

The provisions of this new code require careful study.

Section 263 is new.

Section 264 (1) (*d*) and Sub-Sections (2) and (3) are new.

Section 265, Sub-Sections (2) and (4), are new.

Section 266. In accordance with the recommendation of the Committee the period has been extended to 6 months instead of 3.

Section 267 is new. In accordance with the recommendation of the Committee the liquidator has been given, subject to the leave of the Court, an analogous power to that of the trustee in bankruptcy under Section 54 of the Bankruptcy Act, 1914, of disclaiming onerous property. The Section does not apply to Scotland.

Section 268 is new, and does not apply in Scotland.

Section 269 is new, and does not apply in Scotland.

Section 270 has special application to Scotland, and the effect in Scotland of an English Company.

Section 271 is new and most important, and follows the recommendations of the Committee relating to fraudulent trading (see also Sections 273, 274, and 275). It applies to both past and present "officers" of a Company as to this note Sub-Section (3). It imports into Company Law the provisions of Section 154 of the Bankruptcy Act, 1914.

Section 273 is new and imports into Company Law the provisions of Section 156 of the Bankruptcy Act, 1914.

Section 274 is new and imports into Company Law the amended provisions of the Bankruptcy Act, 1914.

Section 275 is new, and contains the principal recommendations of the Committee relating to fraudulent trading, subjecting past and present Directors of the Company to unlimited personal liability, and avoiding any security held, in addition to criminal liability.

Section 277 is new and replaces Section 217 of the Companies Act, 1908. The Committee were impressed with the evidence as to the defects in the existing system, and the failure to make any adequate use of Section 217 of the Companies Act, 1908, and considered that in suitable cases prosecution should be instituted at the public expense.

Liquidator's responsibilities are increased by this Section (see Sub-Section (2)).

Sections 278 to 281 are new.

Section 286 is new.

Section 287 is new. See Section 119.

Section 292 is new.

Section 296 now makes it clear that all property not held on trust vests in the Crown as *bona vacantia*. *Vide* Trustee Act, 1925, Section 44 (1); Law of Property Act, 1925, Section 181. See *re* Bond (1901), 1 Ch. 15.

Section 298, Sub-Section (5), is new.

PART VI.

RECEIVERS AND MANAGERS.

Disqualification for appointment as receiver.

306.—(1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

(2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as receiver as aforesaid shall be liable to a fine not exceeding one hundred pounds.

(3) In the application of this section to Scotland the expression "body corporate" does not include a firm.

Power in England to appoint official receiver as receiver for debenture holders or creditors.

307. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

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Part VI. —*cont.*

Notification that receiver or manager appointed.

308.—(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorises or permits the default, shall be liable to a fine of twenty pounds.

Power of court to fix remuneration on application of liquidator.

309. The Court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

Delivery to registrar of accounts of receivers and managers.

310.—(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar of companies may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the registrar of companies for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five pounds for every day during which the default continues.

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Part VI. —*cont.*

Enforcement of duty of receiver to make returns, &c.

311.—(1) If

(*a*) any receiver of the property of a company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(*b*) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him;

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (*a*) of the last preceding subsection an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies, and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (*b*) of that subsection the application shall be made by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in paragraph (*a*) of subsection (1) of this section.

Receivers and Managers.

Section 306 is new. A similar disqualification applies in the case of Auditors and Liquidators.

Section 308 is new, see also Section 280, with similar provision in liquidation.

Section 309 is new.

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Part VI.
—*cont*

Sections 310 and 311 are new, and give effect to the Committee's recommendation that Receivers appointed out of Court should have to file accounts, with a summary remedy in case of default.

Part VII.

General Provisions as to Registration.

Registration offices in England and Scotland.

312.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England and Scotland at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the registration of companies under this Act, and may make regulations with respect to their duties, and may remove any persons so appointed.

(3) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done to or by the existing registrar of companies in England or Scotland, as the case may be, or in his absence to or by such person as the Board may for the time being authorise:

Provided that, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

Fees.

313.—(1) There shall be paid to the registrar in respect of the several matters mentioned in the Table set out in the Tenth Schedule to this Act the several fees therein specified.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

Inspection, production and evidence of documents kept by registrar.

314.—(1) Any person may inspect the documents kept by the registrar of companies on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection, and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation and not exceeding sixpence for each folio of a certified copy or extract:

Provided that, where a company has been dissolved under this Act, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any documents in his custody relating to that company may be removed to the Public Record Office, and documents in respect of which any such direction is given shall be disposed of in accordance with the provisions of the Public Record Office Acts, 1838 to 1898, and the rules made thereunder.

(2) No process for compelling the production of any document kept by the registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England or Scotland, certified to be a true copy under the hand of the registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) In the application of this section to Scotland, as in its application to England, a folio shall be deemed to consist of seventy-two words.

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Part VII. —*cont.*

Enforcement of duty of company to make returns to registrar.

315.—(1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar of companies any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar of companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

Section 314. The proviso for the removal to the Public Record Office is new. Sub-Sections (2) and (4) are new.

Section 315 is new.

The Committee had evidence that penalties (which were rarely exacted) had failed to secure prompt returns.

Part VIII.

Application of Act to Companies formed or Registered under former Acts.

Application of Act to companies formed under former Companies Acts.

316. In the application of this Act to existing companies, it shall apply in the same manner—

(1) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;

(2) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and

(3) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, as the case may be.

25 & 26 Vict. c. 89.

317. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, in the same manner as it is in Part IX of this Act declared to apply to companies registered but not formed under this Act:

Application of Act to companies registered under former Companies Acts.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, as the case may be.

318. This Act shall apply to every unlimited company registered as a limited company in pursuance of the Companies Act, 1879, or section fifty-seven of the Companies (Consolidation) Act, 1908, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Application of Act to companies re-registered under former Companies Acts.

42 & 43 Vict. c. 76.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the said Act or said section, as the case may be.

319.—(1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

Provision as to companies registered under the Joint

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Part VIII.
—*cont.*
Stock Companies Acts.

(2) The power of altering articles under section ten of this Act shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Exclusion of companies registered in Irish Free State or Northern Ireland.

320. Nothing in this Part of this Act shall apply to companies registered in the Irish Free State or Northern Ireland.

Section 320 excludes Companies registered in the Irish Free State and Northern Ireland.

Part IX.

Companies not formed under this Act authorised to Register under this Act.

Companies capable of being registered.

321.—(1) With the exceptions and subject to the provisions contained in this section,—

(*a*) any company consisting of seven or more members, which was in existence on the second day of November, eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and

(*b*) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

Provided that—

(i) A company registered in any part of the United Kingdom under the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, shall not register in pursuance of this section:

(ii) A company having the liability of its members limited by Act of Parliament or letters

patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section:

(iii) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee:

(iv) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares:

(v) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:

(vi) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting:

(vii) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the

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Part IX.
—*cont.*

number of votes to which each member is entitled according to the regulations of the company.

Definition of joint stock company.

322. For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Requirements for registration by joint stock companies.

323. Before the registration in pursuance of this Part of this Act of a joint stock company, there shall be delivered to the registrar the following documents:—

(1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) If the company is intended to be registered as a limited company, a statement specifying the following particulars:—

(*a*) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(*b*) The number of shares taken and the amount paid on each share;

(*c*) The name of the company, with the addition of the word "limited" as the last word thereof; and

(*d*) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint stock companies.

324. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

(1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

(2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statements of existing companies.

325. The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

326. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

Exemption of certain companies from payment of fees.

327. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

Addition of "limited" to name.

328. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form, and be registered as, part of its name.

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PART IX. —*cont.*

Certificate of registration of existing companies.

329. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under the Tenth Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated, and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

Vesting of property on registration.

330. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving for existing liabilities.

331. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing actions.

332. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

Effect of registration under Act.

333.—(1) When a company is registered in pursuance of this Part of this Act, the following provisions of this section shall have effect.

(2) All provisions contained in any Act of Parliament or other instrument constituting or regulating the company, including, in the case of a company registered

as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(*a*) Table A shall not apply unless adopted by special resolution;

(*b*) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(*c*) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(*d*) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company;

(*e*) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;

(*f*) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of

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—*cont.*

the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(*g*) In the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

(4) The provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament or other instrument constituting or regulating the company, be vested in the company.

(7) In this section the expression "instrument" includes deed of settlement, contract of co-partnery, cost-book regulations and letters patent.

Power to substitute memorandum and articles for deed of settlement.

334.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

(*a*) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(*b*) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

Power of court to stay or restrain proceedings.

335. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a

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winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

336. Where an order has been made for winding up a company registered in pursuance of this Part of this Act, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Part X.

Winding up of Unregistered Companies.

Meaning of unregistered company.

26 & 27 Vict. c. 87.

337. For the purposes of this Part of this Act, the expression "unregistered company" shall include any trustee savings bank certified under the Trustee Savings Banks Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions:—

(1) a railway company incorporated by Act of Parliament, except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them;

13 & 14 Vict. c. 83. 32 & 33 Vict. c. 114.

(2) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the Companies Act, 1862, or under the Companies (Consolidation) Act, 1908, or under this Act;

(3) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;

(4) a limited partnership registered in England or Northern Ireland.

Winding up of unregistered companies.

338.—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with

respect to winding up shall apply to an unregistered company, with the following exceptions and additions :—

(*a*) If an unregistered company has a principal place of business situate in Northern Ireland, it shall not be wound up under this Part of this Act unless it has a principal place of business situate in England or Scotland or in both England and Scotland:

(*b*) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in England or Scotland, according as its principal place of business is situate in England or Scotland, or if it has a principal place of business situate in both countries, to be registered in both countries and the principal place of business situate in that part of Great Britain in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:

(*c*) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

(*d*) The circumstances in which an unregistered company may be wound up are as follows :—

(i) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(ii) If the company is unable to pay its debts;

(iii) If the court is of opinion that it is just and equitable that the company should be wound up:

(*e*) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts :—

(i) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal

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—*cont.*

place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(ii) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

(iii) If in England or Northern Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(iv) If in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(v) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts:

(*f*) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court or the Court of Session, according as the railway was authorised to be made in England or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867:

Provided that, subject to any order made under section fifty-seven of the Supreme Court of Judicature (Consolidation) Act, 1925, and without prejudice to the power to make orders of transfer under that Act, the jurisdiction of the High Court under this provision shall be exercised by the Chancery Division of that Court and provision may be made by general rules for regulating the exercise of the said jurisdiction:

(*g*) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company: 50 & 51 Vict. c. 47.

(*h*) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications, if any, as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

(2) Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Part of this Act, notwithstanding that it has been

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—*cont.*

dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

(3) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

Section 338 (2) is new.

Contributories in winding up of unregistered company.

339.—(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid:

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

Power of court to stay or restrain proceedings.

340. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered

company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

341. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Provisions of Part X cumulative.

342. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

Part XI.

Companies Incorporated outside Great Britain carrying on business within Great Britain.

Companies to which Part XI applies.

343. This Part of this Act shall apply to all companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, and to all companies incorporated outside Great Britain which have, before the commencement of this Act, established a place of business within Great Britain and continue to have an established place of business within Great Britain at the commencement of this Act.

Documents, &c., to be delivered to

344.—(1) Companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, shall

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registrar by companies carrying on business in Great Britain.

within one month from the establishment of the place of business, deliver to the registrar of companies for registration—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof ;

(*b*) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company ;

(*c*) the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company service of process and any notices required to be served on the company.

(2) The following companies, namely :—

(*a*) companies incorporated outside Great Britain which, before the first day of April, nineteen hundred and nine, established a place of business and at the commencement of this Act continue to have a place of business within Great Britain;

(*b*) companies incorporated in Northern Ireland before the first day of January, nineteen hundred and twenty-two, which at the commencement of this Act have a place of business within Great Britain;

(*c*) companies incorporated in the Irish Free State which, before the twenty-seventh day of March, nineteen hundred and twenty-three, established a place of business and at the commencement of this Act continue to have a place of business within Great Britain;

shall, within one month from the commencement of this Act, deliver to the registrar for registration the documents and particulars specified in the last foregoing subsection.

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(3) Companies to which this Part of this Act applies, other than the companies mentioned in subsections (1) and (2) of this section, shall, if at the commencement of this Act they have not delivered to the registrar the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917, continue subject to the obligation to deliver those documents and particulars in accordance with the said Acts.

7 & 8 Geo. 5. c. 28.

Power of companies incorporated in British possessions to hold lands.

345. A company incorporated in a British possession which has delivered to the registrar of companies—

(1) in the case of a company to which subsection (1) or subsection (2) of the last foregoing section applies, the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of that section;

(2) in the case of any other company to which this Part of this Act applies, the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act:

Provided that nothing in this section shall affect the power of a company to hold lands by virtue of registration in Northern Ireland.

Return to be delivered to registrar where documents, &c. altered.

346. If in the case of any company to which this Part of this Act applies any alteration is made in—

(1) the charter, statutes, or memorandum and articles of the company or any such instrument as aforesaid; or

(2) the directors of the company or the particulars contained in the list of the directors; or

(3) the names or addresses of the persons authorised to accept service on behalf of the company;

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Part XI.
—*cont.*

the company shall, within the prescribed time, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

Balance sheet of company carrying on business in Great Britain.

347.—(1) Every company to which this Part of this Act applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the registrar for registration.

(2) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

Obligation to state name of company, whether limited, and country where incorporated.

348. Every company to which this Part of this Act applies shall—

(1) in every prospectus inviting subscriptions for its shares or debentures in Great Britain state the country in which the company is incorporated; and

(2) conspicuously exhibit on every place where it carries on business in Great Britain the name of the company and the country in which the company is incorporated; and

(3) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company; and

(4) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

Service on company to which Part XI applies.

349. Any process or notice required to be served on a company to which this Part of this Act applies shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under this Part of this Act and left at or sent by post to the address which has been so delivered:

Provided that—

(1) where any such company makes default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notices; or

(2) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served;

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Great Britain.

Office where documents to be filed.

350.—(1) Any document, which any company to which this Part of this Act applies is required to deliver to the registrar of companies, shall be delivered to the registrar at the registration office in England or Scotland according as the company has established a place of business in England or Scotland, and if it has established or establishes a place of business both in England and in Scotland, the document shall be delivered at the registration office both in England and in Scotland, and references to the registrar of companies in this Part of this Act shall be construed accordingly:

Provided that nothing in this Part of this Act shall operate to require any document to be delivered at any registration office if it has been delivered at that office before the commencement of this Act.

(2) If any company to which this Part of this Act applies ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of the fact to the registrar of companies for that part, and as from the date on which notice is so given the

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—*cont.*

obligation of the company to deliver any document to the registrar shall cease.

Penalties.

351. If any company to which this Part of this Act applies fails to comply with any of the foregoing provisions of this Part of this Act the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

Interpretation of Part XI.

352. For the purposes of this Part of this Act :—

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

The expression "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

The expression "place of business" includes a share transfer or share registration office;

The expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act.

Special Provisions as to Companies incorporated in Channel Islands or Isle of Man.

Obligation of company incorporated in Channel Islands or Isle of Man to deliver documents to registrar.

353. Where a company incorporated in the Channel Islands or the Isle of Man—

(1) after the commencement of this Act establishes a place of business in England or Scotland; or

(2) has before the commencement of this Act established and at the commencement of this Act continues to have a place of business in England or Scotland;

all the provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies (other than provisions requiring the payment of a fee in respect of the registration of a company) shall apply to the company in like manner as if it were a

company registered in England or Scotland, as the case may be, and if the company establishes places of business both in England and in Scotland the said provisions shall so apply as if the company were registered both in England and in Scotland:

Provided that, in the case of a company which has established a place of business before the commencement of this Act, the time within which documents must be forwarded or delivered to, or filed with, the registrar shall run from the commencement of this Act.

This Part gives effect to the Committee's recommendations regarding Companies established outside Great Britain, and extends the provisions of Section 274 of the Companies Act, 1908, to Companies which have established a place of business in Great Britain before the commencement of that Act, and continue to have such a place of business at the commencement of the 1929 Act, and to all Companies incorporated in the Irish Free State or Northern Ireland which have a place of business at the commencement of the 1929 Act, providing that returns shall be kept up to date, filing of balance sheet (with translation if necessary), provisions for acceptance of service, and other matters such as alterations, discontinuance of business, etc.

In the case of Companies incorporated in the Channel Island, or the Isle of Man similar requirements are provided. In every case the filing with the Registrar is to be in England or Scotland or in both, in accordance with the country or countries in which the place of business is established.

The whole of this Part requires careful and detailed study.

PART XII.

RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE.

Provisions with respect to prospectuses of foreign companies

354.—(1) It shall not be lawful for any person—

(*a*) to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside

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Part XII. —*cont.* inviting subscriptions for shares or offering shares for sale.

Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless—

(i) before the issue, circulation or distribution of the prospectus in Great Britain a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar of companies;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated;

(iv) the prospectus otherwise complies with this Part of this Act; or

(*b*) to issue to any person in Great Britain a form of application for share-s in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part of this Act:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a bonâ fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue

of section thirty-eight of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section thirty-seven of this Act shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five hundred pounds.

(7) In this and the next following section the expressions "prospectus," "shares," and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

Requirements as to prospectus.

355.—(1) In order to comply with this Part of this Act a prospectus in addition to complying with the provisions of sub-paragraphs (ii) and (iii) of paragraph (*a*) of subsection (1) of the last foregoing section must—

(*a*) contain particulars with respect to the following matters—

(i) the objects of the company;

(ii) the instrument constituting or defining the constitution of the company;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

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(v) the date on which and the country in which the company was incorporated;

(vi) whether the company has established a place of business in Great Britain, and, if so, the address of its principal office in Great Britain:

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(*b*) subject to the provisions of this section, state the matters specified in Part I of the Fourth Schedule to this Act (other than those specified in paragraph 1 of the said Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of the said Schedule:

Provided that—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and

(ii) in paragraph 3 of Part I of the said Fourth Schedule a reference to the constitution of the company shall be substituted for the reference to the articles; and

(iii) paragraph 1 of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(*c*) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

Sections 354 and 355 give effect to the Committee's recommendation that foreign Companies should be placed in the same position so far as possible as British Companies in connection with the issues of prospectuses in Great Britain.

The detailed provisions of these two Sections are very complicated, and require careful study.

Restrictions on offering of shares for subscription or sale.

356.—(1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection the expression "house" shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars

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as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Great Britain, either by such a statement as aforesaid, or by such a prospectus as complies with this Part of this Act:

Provided that the provisions of this subsection shall not apply—

(*a*) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in Great Britain and the offer so states and specifies the stock exchange; or

(*b*) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(*c*) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters—

(*a*) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Great Britain where that principal can be served with process;

(*b*) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Great Britain;

(*c*) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(*d*) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(*e*) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(*f*) the names and addresses of the directors of the company;

(*g*) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;

(*h*) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Great Britain or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(*i*) where the offer relates to units, particulars of the name and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Great Britain where that document or a copy thereof can be inspected.

In this subsection the expression " company " means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company

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shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires, the expression "shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and the expression "unit" means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted in England of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

Where the court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the High Court.

Section 356 is a reproduction of Section 92 of the Companies Act, 1928, which alone of all the Sections in that Act came into force on the passing of that Act, and is an interesting piece of legislation which incidentally raises questions of some difficulty. The Committee were much pressed with evidence as to the activities of certain American adventurers who had recently conducted a very successful campaign all over the country selling "units" in worthless or non-existent oil properties, and had succeeded in getting away before anything could be done to them: and also as to the ingenious circularising of particular sections of the public by touts who by specious or mendacious representations had induced people who could ill afford to do so to part with money for shares in derelict Companies. The Committee, while venturing to suggest that this was rather a matter for special legislation, were not inclined to

adopt the attitude of those superior persons who, in the face of evidence of the magnitude of the evil, would have left the fool to his folly, and this Section, as further amended in Committee of the House, represents the remedy proposed.

Proviso (*a*) to Sub-Section (2) is not clear.

Permission to deal invariably precedes an official quotation. What is a " recognised Stock Exchange "?

(*c*) " In the habit of doing regular business " is a vague phrase.

(3) Appears to require a uniform type.

(4) (*h*) Having regard to (2) (*a*) this would appear to refer only to shares in foreign Companies.

(7) It will be interesting to see what interpretation will be put on this most obscure Sub-Section.

(8) This Sub-Section would seem to necessitate some special procedure.

Though the Section has been in force some time as Section 92 of the Companies Act, 1928, it does not appear that any case has yet arisen. Incidentally it may be noted that in reliance on Section 110 (5) of the Companies Act, 1928, Sub-Section (8) of Section 92 has been redrafted in the Companies Act, 1929, " where any person is convicted *in England*," but Section 110 (5) has not yet come into operation; consequently it would appear that until the Companies Act, 1929, commences, Sub-Section (8) is in operation in Scotland, with an appeal to the High Court in England, if this anomaly is not to be corrected before the whole Act is put into operation.

Part XIII.

Miscellaneous.

Prohibition of Partnerships with more than Twenty Members.

357. No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking) that has for its object the acquisition of gain by the company, association, or

Prohibition of partnerships with more than twenty members.

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partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction.

Provisions relating to Banks.

Prohibition of banking partnerships with more than ten members.

358. No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent.

On registration of banking company with limited liability, notice to be given to customers.

359.—(1) Where a banking company which was in existence on the seventh day of August, eighteen hundred and sixty-two, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Liability of bank of issue unlimited in respect of notes.

360.—(1) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes, and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited:

Provided that, if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

(2) For the purposes of this section, the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Privileges of banks making annual return.

361.—(1) Where a company carrying on the business of bankers has duly forwarded to the registrar of companies the annual return required by section one hundred and eight of this Act and has added thereto a statement of the names of the several places where it carries on business, the company—

(*a*) shall not be required to furnish to the Commissioners of Inland Revenue any returns under the provisions of the Country Bankers Act, 1826, the Bankers (Scotland) Act, 1826, section twenty-one of the Bank Charter Act, 1844, or section thirteen of the Bank Notes (Scotland) Act 1845; and

7 Geo. 4. c. 46. 7 Geo. 4. c. 67. 7 & 8 Vict. c. 32. 8 & 9 Vict. c. 38.

(*b*) shall be deemed to be a "bank" and "bankers" within the meaning of the Bankers' Books Evidence Act, 1879.

42 & 43 Vict. c. 11.

(2) The fact of the said annual return and statement having been duly forwarded may be proved in any legal proceedings by the certificate of the registrar.

Miscellaneous Offences.

Penalty for false statement.

362. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Eleventh Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction in Scotland on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and be liable on summary conviction in England or Scotland to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

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Provided that—

(*a*) the fine imposed on summary conviction shall not exceed one hundred pounds;

(*b*) nothing in this section shall affect the provisions of the Perjury Act, 1911.

1 & 2 Geo. 5 c. 6.

Penalty on perjury in Scotland.

363. If in Scotland any person, on examination on oath authorised under this Act or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

Penalty for improper use of word "Limited."

364. If any person or persons trade or carry on business under any name or title of which "Limited," or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

Section 364 now recognises "a contraction or imitation" of the word "limited."

General Provisions as to Offences.

Provision with respect to default fines and meaning of "officer in default."

365.—(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

Section 365 is new. A "default fine" which occurs throughout the Act is either of the amount specified in the particular Section, or of five pounds for every day during which the default, etc., continues.

To be in default the Director, Manager, Secretary, or other officer of the Company must *knowingly and wilfully* authorise or permit the default, etc.

Prosecution of offences punishable by fine.

366. All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.

Application of fines.

367. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

Saving as to private prosecutors.

368. Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

Saving for privileged communications.

369. Where proceedings are instituted under this Act against any person by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

Section 368 is new.
Section 369 is new.

Service of Documents and Legal Proceedings.

Service of documents on company.

370.—(1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

(2) Where a company registered in Scotland carries on business in England, the process of any court in England may be served on the company by leaving it at or sending it by post to the principal place of business of the company in England, addressed to the manager or other head officer in England of the company.

(3) Where process is served on a company under subsection (2) of this section, the person issuing out the

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process shall send a copy thereof by post to the registered office of the company.

Section 370. Sub-Sections (2) and (3) are new.

Costs in actions by certain limited companies.

371. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

372.—(1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith

direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following :—

(*a*) directors of a company :

(*b*) managers of a company :

(*c*) officers of a company :

(*d*) persons employed by a company as auditors, whether they are or are not officers of the company.

Section 372. This important Section replacing Section 279 of the Companies Act, 1908, is a redraft consolidating the provisions of Sections 78 (2)-(4) and Section 86 of the Companies Act, 1928.

Power to enforce orders.

373. Orders made by the High Court under this Act may be enforced in the same manner as orders made in an action pending therein.

Rules of procedure in Scotland.

374.—(1) The Court of Session may, by Act of Sederunt, make rules regulating the procedure in proceedings under this Act in the Court of Session or in a sheriff court, including appeals from the sheriff court.

(2) The power to make rules under this section includes power to make rules with respect to costs and fees.

Jurisdiction of stannaries court.

375.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the

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court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands other than the Irish Free State, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

General Provisions as to Board of Trade.

Annual report by Board of Trade.

376. The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

Authentication of documents issued by Board of Trade.

377. Any approval, sanction, or licence, or revocation of licence, which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

Orders and certificates of Board to be evidence.

378.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Power to alter tables and forms.

379.—(1) The Board of Trade may alter Table A, the form in the Seventh Schedule and the table of fees in the Tenth Schedule to this Act, so that it does not increase the amount of fees payable to the registrar under the said Tenth Schedule, and may alter or add to Tables B, C, D and E in the First Schedule, and the forms in the Second and Sixth Schedules to this Act.

(2) Any such table or form, when altered, shall be published in the London Gazette, and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that Table.

Interpretation.

Interpretation.

380.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):—

"Annual return" means the return required to be made, in the case of a company having a share capital, under section one hundred and eight, and, in the case of a company not having a share capital, under section one hundred and nine, of this Act;

"Articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of the last-mentioned Act, or in Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or in that Table as altered in pursuance of section one hundred and eighteen of the last mentioned Act, or in Table A in the First Schedule to this Act;

19 & 20 Vict. c. 47.

"Book and paper" and "book or paper" include accounts, deeds, writings, and documents;

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"Company" means a company formed and registered under this Act or an existing company;

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, but does not include a company registered under the said enactments in Northern Ireland or the Irish Free State;

"Company within the stannaries" means a company engaged in or formed for working mines within the stannaries;

"The court" used in relation to a company means the court having jurisdiction to wind up the company;

"The court exercising the stannaries jurisdiction" used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested;

"Debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"Director" includes any person occupying the position of director by whatever name called;

"Document" includes summons, notice, order, and other legal process, and registers;

"The Gazette" means, as respects companies registered in England, the London Gazette and as respects companies registered in Scotland, the Edinburgh Gazette;

"General rules" means general rules made under section three hundred and five of this Act, and includes forms;

"Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or

20 & 21 Vict. c. 14.
20 & 21 Vict. c. 49.
21 & 22 Vict. c. 91.

any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies;

"Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;

"Prescribed" means as respects the provisions of this Act relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade;

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"Real and personal," as respects Scotland, means heritable and moveable;

"The registrar of companies," or, when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England or Scotland, or in the stannaries, as the case requires;

"Share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

"Table A" means Table A in the First Schedule to this Act.

(2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

Section 380. The definition of "Debenture" is new; the words "bonds and any other securities of a Company whether constituting a charge on the assets of the Company or not" have been added.

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Section 380 (2) is a new and very important protection to professional men.

It may be noted that in the Tenth Schedule a new scale of fees for registration of a Company not having a share capital has been substituted for that contained in Part II of Table B in the First Schedule of the Companies Act, 1908.

Repeal, Savings, Extent, Short Title and Commencement.

381.—(1) The enactments mentioned in the First Part of the Twelfth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part.

(2) Without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889—

52 & 53 Vict. c. 63.

(*a*) nothing in this repeal shall affect any Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Act shall have effect as if made, passed, given, taken, issued or done under this Act:

Provided that any rule made under section two hundred and thirty-eight of the Companies (Consolidation) Act, 1908, shall be deemed to have been made, in the case of a rule made with respect to fees in the High Court under section two hundred and thirteen of the Supreme Court of Judicature (Consolidation) Act, 1925, and with respect to any other matter in the High Court under section ninety-nine of that Act, and, in the case of a rule made with respect to proceedings in the court exercising the stannaries jurisdiction, under

section one hundred and sixty-four of the County Courts Act, 1888;

(*b*) any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act;

(*c*) any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Act;

(*d*) any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act;

(*e*) all funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(3) In this section the expression "former enactment relating to companies" means any enactment repealed by this Act and any enactment repealed by the Companies (Consolidation) Act, 1908.

Savings.

382. Nothing in this Act shall affect—

(1) The incorporation of any company registered under any enactment hereby repealed;

(2) Table B in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act;

(3) Table A in the First Schedule annexed to the Companies Act, 1862, or any part thereof, either as originally contained in that schedule or as altered in pursuance of section seventy-one of that Act, so far as the same applies to any company existing at the commencement this Act;

(4) Table A in the First Schedule to the Companies (Consolidation) Act, 1908, or any part thereof, either as originally contained in that

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Schedule or as altered in pursuance of section one hundred and eighteen of that Act, so far as the same applies to any company existing at the commencement of this Act;

(5) The enactments set out in the second Part of the Twelfth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862;

(6) The power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865;

28 & 29 Vict. c. 78.

34 & 35 Vict. c. 31.

(7) The provisions of section five of the Trade Union Act, 1871:

Provided that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

Saving of pending proceedings for winding up.

383. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

Application to Ireland.

384.—(1) Nothing in this Act, except the provisions thereof which relate expressly to companies registered or incorporated in Northern Ireland or outside Great Britain, shall apply to or in relation to companies registered or incorporated in Northern Ireland.

(2) Nothing in this Act, except where it is expressly provided to the contrary, shall affect the law in force in Northern Ireland at the commencement of this Act.

Short title and commencement.

385.—(1) This Act may be cited as the Companies Act, 1929.

(2) This Act shall come into operation on the first day on which, by virtue of Orders made by His Majesty in Council under subsection (4) of section one hundred and eighteen of the Companies Act, 1928, all the provisions of that Act will be in operation.

18 & 19 Geo. 5. c. 45.

SCHEDULES.

FIRST SCHEDULE.

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Table A.

Sections 8, 115, 333, 379, 380.

Regulations for Management of a Company limited by Shares.

Preliminary.

1. In these regulations :—

"The Act" means the Companies Act, 1929.

When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Shares.

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but

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so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 45 (1) of the Act.

Lien.

7. The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser

thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares.

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company

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in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve :

I, *A.B.*, of , in consideration of the sum of £ paid to me by *C.D.* of (herein-after called "the said transferee") do hereby transfer to the said transferee the share [*or shares*] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same: and I, the said transferee, do hereby agree to take the said share [*or shares*] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, &c.

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

23. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment

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required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

30. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but

the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Alteration of Capital.

34. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

37. The company may by ordinary resolution—

(*a*) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

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(*b*) Sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 50 (1) (*d*) of the Act;

(*c*) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

39. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 114 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

42. Subject to the provisions of section 117 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall

be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings.

44. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

48. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting

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shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 per cent. of the paid up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

54. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any

such committee, curator bonis, or other person may, on a poll, vote by proxy.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. On a poll votes may be given either personally or by proxy.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve :—

Company, Limited.

"I, , of ,
in the county of , being a member
of the Company, Limited,
hereby appoint , of
, as my proxy, to vote for me and
on my behalf at the [*ordinary or extraordinary, as the case may be*] general meeting of the company to be
held on the day of
and at any adjournment thereof."

Signed this day of

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings.

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the

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company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company

Directors.

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors.

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) Of all appointments of officers made by the directors;

(*b*) Of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) Of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

72. The office of director shall be vacated, if the director—

(*a*) ceases to be a director by virtue of section 141 of the Act; or

(*b*) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or

(*c*) becomes bankrupt; or

(*d*) becomes prohibited from being a director by reason of any order made under sections 217 or 275 of the Act; or

(*e*) is found lunatic or becomes of unsound mind; or

(*f*) resigns his office by notice in writing to the company; or

(*g*) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 149 of the Act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

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Rotation of Directors.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

74. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by

a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

86. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

88. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

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Dividends and Reserve.

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct.

96. No dividend shall bear interest against the company.

Accounts.

97. The directors shall cause proper books of account to be kept with respect to—

All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

All sales and purchases of goods by the company; and

The assets and liabilities of the company.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with section 123 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the Auditors' report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit.

102. Auditors shall be appointed and their duties regulated in accordance with sections 132, 133 and 134 of the Act.

Notices.

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

A.D. 1929.
1st Sch. Table A. —*cont.*

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address within the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating the neighbourhood of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

Sections 11 and 379.

Table B.

Form of Memorandum of Association of a Company limited by Shares.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats "between such places as the company may from time to time "determine, and the doing all such other things as are incidental "or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of shares taken by each Subscriber.
"1. John Jones of	in the county of	merchant	200
"2. John Smith of	in the county of	,,	25
"3. Thomas Green of	in the county of	,,	30
"4. John Thompson of	in the county of	,,	40
"5. Caleb White of	in the county of	,,	15
"6. Andrew Brown of	in the county of	,,	5
"7. Cæsar White of	in the county of	,,	10
		Total shares taken	325"

Dated the day of 19

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

Table C.

Sections 11 and 379.

Form of Memorandum and Articles of Association of a Company limited by Guarantee, and not having a Share Capital.

Memorandum of Association.

1st. The name of the company is "The Kent School Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are the carrying on a school for boys in the county of Kent and the doing all such other things as are incidental or conducive to the attainment of the above object.

A.D. 1929.

1st Sch. Table C. —*cont.*

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member. and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

" 1. John Jones of	in the county of	schoolmaster.
" 2. John Smith of	in the county of	,,
" 3. Thomas Green of	in the county of	,,
" 4. John Thompson of	in the county of	,,
" 5. Caleb White of	in the county of	,,
" 6. Andrew Brown of	in the county of	,,
" 7. Cæsar White of	in the county of	,,

Dated the day of 19

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association.

Preliminary.

1. In these regulations :—

The Act means the Companies Act, 1929.

When any provision of the Act is referred to the reference is to such provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Members.

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

7. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 114 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

8. Subject to the provisions of section 117 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall

A.D. 1929.
1st Sch. Table C. —*cont.*

be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings.

10. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

11. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

12. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

13. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

14. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

15. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting

from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

17. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made, by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

A.D. 1929.
1st Sch. Table C. —*cont.*

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorised. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve :—

Company, Limited.

"I
of in the county of
being a member of the Company,
Limited, hereby appoint of
as my proxy to vote for me and
on my behalf at the [ordinary or extraordinary, *as the case may be*] general meeting of the company to be
held on the day of
and at any adjournment thereof."

Signed this day of

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings.

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

29. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30. The remuneration of the directors shall from time to time be determined by the company in general meeting.

Powers and Duties of Directors.

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

33. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

34. The office of director shall be vacated, if the director—

(*a*) without the consent of the company in general meeting holds any other office of profit under the company; or

(*b*) becomes bankrupt; or

(*c*) becomes prohibited from being a director by reason of any order made under sections 217 or 275 of the Act;

(*d*) is found lunatic or becomes of unsound mind; or

(*e*) resigns his office by notice in writing to the company;

A.D. 1929.

1st Sch. Table C. —*cont.*

(*f*) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 149 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

36. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

37. A retiring director shall be eligible for re-election.

38. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

39. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

40. Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

41. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the

same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

43. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceed three, be three and shall, when the number of directors does not exceed three, be two.

45. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

46. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

47. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

48. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

49. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

50. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that

A.D. 1929.
1st Sch. Table C. —*cont.*

there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Accounts.

51. The directors shall cause proper books of account to be kept with respect to—

All sums of money received and expended by the company and the matter in respect of which the receipt and expenditure takes place;

All sales and purchases of goods by the company; and

The assets and liabilities of the company.

52. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

53. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

54. The directors shall from time to time in accordance with section 123 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts balance sheets and reports as are referred to in that section.

55. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the Company.

Audit.

56. Auditors shall be appointed and their duties regulated in accordance with sections 132, 133, and 134 of the Act.

Notices.

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of 24 hours after the letter containing the same was posted.

58. If a member has no registered address within the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to h m, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

59. Notice of every general meeting shall be given in some manner hereinbefore authorised to every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them. No other persons shall be entitled to receive notices of general meetings.

Names, Addresses and Descriptions of Subscribers.

" 1. John Jones of	in the county of	schoolmaster.
" 2. John Smith of	in the county of	,,
" 3. Thomas Green of	in the county of	,,
" 4. John Thompson of	in the county of	,,
" 5. Caleb White of	in the county of	,,
" 6. Andrew Brown of	in the county of	,,
" 7. Cæsar White of	in the county of	,,

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 20, Bond Street, London.

Table D.

Memorandum and Articles of Association of a Company limited by Guarantee, and having a Share Capital. Sections 11 and 379

Memorandum of Association.

1st. The name of the company is " The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

A.D. 1929.
1st Sch. Table D. —*cont.*

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by "providing hotels and conveyances by sea and by land for the "accommodation of travellers, and the doing all such other "things as are incidental or conducive to the attainment of the "above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the county of	merchant	200
"2. John Smith of	in the county of	,,	25
"3. Thomas Green of	in the county of	,,	30
"4. John Thompson of	in the county of	,,	40
"5. Caleb White of	in the county of	,,	15
"6. Andrew Brown of	in the county of	,,	5
"7. Cæsar White of	in the county of	,,	10
		Total shares taken	325"

Dated the day of 19

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association.

1. The Articles of Table A set out in the First Schedule to the Companies Act, 1929, shall be the articles of association of the company and apply to the company.

Names, Addresses, and Descriptions of Subscribers.

" 1. John Jones of	in the county of	merchant.
" 2. John Smith of	in the county of	,,
" 3. Thomas Green of	in the county of	,,
" 4. John Thompson of	in the county of	,,
" 5. Caleb White of	in the county of	,,
" 6. Andrew Brown of	in the county of	,,
" 7. Cæsar White of	in the county of	,,

Dated the day of 19 "

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell,
London.

Table E.

Memorandum and Articles of Association of an unlimited Company having a Share Capital.

Sections 11 and 379.

Memorandum of Association.

1st. The name of the company is " The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are " the working of a patent method of founding and casting " stereotype plates, of which method John Smith of London, is " the sole patentee, and the doing of all such things as are inci- " dental or conducive to the attainment of the above objects."

A.D. 1929.

1st Sch. Table E. —*cont.*

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
" 1. John Jones of	in the county of	merchant	3
" 2. John Smith of	in the county of	,,	2
" 3. Thomas Green of	in the county of	,,	1
" 4. John Thompson of	in the county of	,,	2
" 5. Caleb White of	in the county of	,,	2
" 6. Andrew Brown of	in the county of	,,	1
" 7. Abel Brown of	in the county of	,,	1
		Total shares taken	12 "

Dated the day of 19

Witness to the above signatures,

A.B., No. 20, Bond Street, London.

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is two thousand pounds divided into twenty shares of one hundred pounds each.

2. The company may by special resolution—

(*a*) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;

(*b*) consolidate its shares into shares of a larger amount than its existing shares;

(*c*) sub-divide its shares into shares of a smaller amount than its existing shares;

(*d*) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;

(*e*) reduce its share capital in any way.

3. The Articles of Table A set out in the First Schedule to the Companies Act, 1929 (other than Articles 30, 31, 32, 33, 34, 37, and 38) shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of	in the county of	merchant.
2. John Smith of	in the county of	,,
3. Thomas Green of	in the county of	,,
4. John Thompson of	in the county of	,,
5. Caleb White of	in the county of	,,
6. Andrew Brown of	in the county of	,,
7. Abel Brown of	in the county of	,,

Dated the day of 19

Witness to the above signatures,

A.B., No. 20, Bond Street, London.

SECOND SCHEDULE.

Sections 14 and 379.

FORM OF LICENCE TO HOLD LANDS.

The Board of Trade hereby licence the
to hold the lands hereunder described (*insert description of lands*)
[*or* to hold lands not exceeding in the whole acres].

The conditions of this licence are (*insert conditions, if any*)

A.D. 1929.

THIRD SCHEDULE.

Section 27.

Form of Statement in lieu of Prospectus to be delivered to Registrar by a Private Company on becoming a Public Company.

The Companies Act, 1929.

Statement in lieu of Prospectus delivered for registration by

[*Insert the name of the Company.*]

Pursuant to section 27 of the Companies Act, 1929.

Delivered for registration by

The nominal share capital of the Company.	£
Divided into - - - - - -	Shares of £ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £ each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
Amount of shares issued - - -	Shares
Amount of commissions paid in connection therewith.	
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.	
Unless more than one year has elapsed since the date on which the Company was entitled to commence business :—	
Amount of preliminary expenses.	£
Amount paid to any promoter -	Name of promoter. Amount £
Consideration for the payment -	Consideration :—

If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid.
Consideration for the issue of those shares or debentures.	3. debenture £ 4. Consideration :—
Names and addresses of Vendors of Property (1) purchased or acquired by the Company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the Company.	
Amount (in cash, shares or debentures) paid or payable to each separate vendor.	
Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.	Total purchase price £ Cash - - £ Shares - £ Debentures - £ Goodwill - £
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the Company.	

A.D. 1929.
—
3RD SCH.
—*cont.*

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be purchased or acquired by the Company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm.

Rates of the dividends (if any) paid by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and

the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing.)

Date

NOTE.—In this Form the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule.

FOURTH SCHEDULE.

Sections 35 and 355.

PART I.

MATTERS REQUIRED TO BE STATED IN PROSPECTUS.

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4. The names, descriptions, and addresses of the directors or proposed directors.

5. Where shares are offered to the public for subscription particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is

A.D. 1929.

4th Sch. —*cont.*

to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—

(*a*) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(*b*) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(*c*) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(*d*) working capital; and

(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for goodwill.

10. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

Part II.

Reports to be set out in Prospectus.

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or

A.D. 1929. 4th Sch. —*cont.*

indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

Part III.

Provisions applying to Parts I. and II. of Schedule.

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(*a*) the purchase money is not fully paid at the date of the issue of the prospectus;

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

4. For the purposes of paragraph 8 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

FIFTH SCHEDULE.

A.D. 1929.

Section 40.

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED.

THE COMPANIES ACT, 1929.

Statement in lieu of Prospectus delivered for registration by

[*Insert the name of the company.*]

Pursuant to section 40 of the Companies Act, 1929.

Delivered for registration by

The nominal share capital of the Company.	£
Divided into - - - - - -	Shares of £ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £ each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debenture £ .
The consideration for the intended issue of those shares and debentures.	4. Consideration:—
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the Company.	

A.D. 1929.

5TH SCH. —*cont.*

Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash - - £ Shares - £ Debentures - £ Goodwill - £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company; or	Amount paid. „ payable.
Rate of the commission - - -	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	£
Amount paid or intended to be paid to any promoter. Consideration for the payment -	Name of promoter. Amount £ Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the Company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or,	

where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

Date

NOTE.—In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule.

A.D. 1929.

SIXTH SCHEDULE.

Sections 108 and 379.

Form of Annual Return of a Company having a Share Capital.

Annual Return of the Company, Limited made up to the day of 19 (being the fourteenth day after the date of the first or only ordinary general meeting in 19).

The address of the registered office of the Company is as follows :—

Summary of Share Capital and Shares.

Nominal Share Capital £ divided into*	£	shares of each.
	£	shares of each.
Total number of shares taken up* to the day of 19 being the date of the return (which number must agree with the total shown in the list as held by existing members).		
Number of shares issued subject to payment wholly in cash.		
Number of shares issued as fully paid up otherwise than in cash.		
Number of shares issued as partly paid up to the extent of per share otherwise than in cash.		
†Number of shares (if any) issued at a discount.		
Total amount of discount on the issue of shares which has not been written off at the date of this Return.	£	

* Where there are shares of different kinds or amounts (*e.g.*, Preference and Ordinary or £1 and 1*s.*) state the number and nominal values separately.

† If the shares are of different kinds, state them separately.

*There has been called up on each of shares.	£
*There has been called up on each of shares.	£
*There has been called up on each of shares.	£
†Total amount of calls received, including payments on application and allotment.	£
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash.	£
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share otherwise than in cash.	£
Total amount of calls unpaid - - -	£
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return.	£
Total number of shares forfeited - - -	
Total amount paid (if any) on shares forfeited	£
Total amount of shares for which share warrants to bearer are outstanding.	£
Total amount of share warrants to bearer issued and surrendered respectively since the date of the last Return.	Issued £ Surrendered £
Number of shares comprised in each share warrant to bearer.	
Total amount of the indebtedness of the Company in respect of all mortgages and charges of the kind which are required (or, in the case of a Company registered in Scotland, which, if the Company had been registered in England, would be required) to be registered with the Registrar of Companies under the Companies Act, 1929.	£

* Where various amounts have been called, or there are shares of different kinds, state them separately.

† Include what has been received on forfeited as well as on existing shares.

A.D. 1929.

6TH SCH. —*cont.*

Copy of last audited Balance Sheet of the Company.

NOTE.—Except where the Company is (1) a "Private Company" within the meaning of Section 26 of the Companies Act, 1929, or is (2) an Assurance Company which has complied with the provisions of Section 7 (4) of the Assurance Companies Act, 1909, this Return must include a written copy, certified by a Director or by the Manager or Secretary of the Company to be a true copy, of the last balance sheet which has been audited by the Company's auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

Private Company.

Certificates to be given by a Private Company.

A. "I certify that the Company has not since the date "of the [1]last Annual Return issued any invitation to the public "to subscribe for any shares or debentures of the Company."

(Signature)

(State whether Director or Secretary.)

B. Should the number of members of the Company exceed fifty the following certificate is also required :—

"I certify that the excess of members of the Company "above fifty consists wholly of persons who are in the "employment of the Company and/or of persons who, "having been formerly in the employment of the Company "were while in such employment, and have continued "after the determination of such employment to be, "members of the Company."

(Signature)

(State whether Director or Secretary.)

[1] In the case of the first Annual Return strike out the words "last Annual Return" and substitute therefore the words "Incorporation of the Company."

NOTE.—Banking companies must add a list of all their places of business.

The Return must be signed at the end by a Director or by the Manager or Secretary of the Company.

Delivered for filing by

Particulars of the *Directors of the Company, Limited, at the date of the Annual Return.

†The present Christian Name or Names and Surname.	Any former Christian Name or Names or Surname.	Nationality.	Nationality of origin (if other than the present nationality).	Usual residential address.	‡Other business occupation if any. If none state so.

* "Director" includes any person who occupies the position of a Director by whatever name called and any person in accordance with whose directions or instructions the Directors of a Company are accustomed to act.

† In the case of a Corporation its corporate name and registered or principal office should be shown.

‡ In the case of an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.

List of Persons holding Shares in the Company, Limited, on the day of 19 , and of Persons who have held Shares therein at any time since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, showing their Names and Addresses, and an Account of the Shares so held.

N.B.—If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

Folio in Register Ledger, containing Particulars.	Names, Addresses, and Occupations.				Account of Shares.					
	Surname.	Christian Name.	Address.	Occupation.	*Number of Shares held by existing Members at date of Return.†	‡Particulars of Shares Transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by persons who are still Members.		‡Particulars of Shares Transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company by persons who have ceased to be Members.		Remarks.
						Number.†	Date of Registration of Transfer.	Number.†	Date of Registration of Transfer.	

(Signature)
(State whether Director or Manager or Secretary)

* The aggregate Number of Shares held, and not the Distinctive Numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the Summary to have been taken up.

† When the Shares are of different classes these columns may be subdivided so that the number of each class held, or transferred, may be shown separately. Where any Shares have been converted into Stock the amount of Stock held by each member must be shown.

‡ The date of Registration of each Transfer should be given as well as the Number of Shares transferred on each date. The Particulars should be placed opposite the name of the Transferor, and not opposite that of the Transferee, but the name of the Transferee may be inserted in the "Remarks" column immediately opposite the particulars of each Transfer.

A.D. 1929.

SEVENTH SCHEDULE.

Section 131.

FORM OF STATEMENT to be published by BANKING and INSURANCE COMPANIES and DEPOSIT, PROVIDENT, or BENEFIT SOCIETIES.

* The share capital of the company is , divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company.

On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*]
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

EIGHTH SCHEDULE.

Section 224.

PART I.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO BE FINAL.

Orders :—

As to time for proving claims. S. 210.

As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company. S. 214.

8TH SCH. —*cont.*

S. 288. As to meetings for ascertaining wishes of creditors or contributories.

S. 153. As to summoning meetings of creditors or contributories where a compromise is proposed.

S. 291. As to the examination of witnesses in regard to the property or affairs of a company.

PART II.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO TAKE EFFECT UNTIL RECLAIMING NOTE DISPOSED OF.

Orders :—

Ss. 172, 177, 202, 336, 340, 341. Restraining or permitting commencement or continuance of legal proceedings.

Ss. 188, 249, 259. Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or under supervision.

S. 191. Sanctioning the exercise of any power by an official liquidator other than the powers specified in paragraphs (*d*), (*e*) and (*f*) of subsection (1) and the power to appoint a law agent.

S. 204. Requiring the delivery of property or documents to the official liquidator.

S. 218. As to the arrest and detention of an absconding contributory and his property.

S. 184 (4). Limiting the powers of provisional official liquidators.

S. 256. For continuance of winding up under supervision.

NINTH SCHEDULE.

A.D. 1929.

s. 260.

PROVISIONS WHICH DO NOT APPLY IN THE CASE OF A WINDING UP SUBJECT TO SUPERVISION OF THE COURT.

Statement of Companies affairs to be submitted to Official Receiver.	s. 181.
Report by Official Receiver.	s. 182.
Power of Court to appoint Liquidator.	s. 183.
Appointment and powers of provisional Liquidator.	s. 184.
Appointment, style, &c., of Liquidators in English winding up.	s. 185.
Provisions where person other than Official Receiver is appointed Liquidator.	s. 186.
Provisions as to Liquidators in Scottish winding up.	s. 187.
General provisions as to Liquidators.	s. 188 except subs. (5).
Exercise and control of Liquidators' powers in England.	s. 192.
Books to be kept by Liquidator in English winding up.	s. 193.
Payments of Liquidator in English winding up into bank.	s. 194.
Audit of Liquidators' accounts in English winding up.	s. 195.
Control of Board of Trade over Liquidators in England.	s. 196.
Release of Liquidators in England.	s. 197.
Meeting of creditors and contributories to determine whether committee of inspection shall be appointed.	s. 198.
Constitution and proceedings of committee of inspection.	s. 199.
Powers of Board of Trade where no committee of inspection in England.	s. 200.
Additional powers of committee of inspection in Scotland.	s. 201.
Appointment in England of special manager.	s. 209.
Power in England to order public examination of promoters, directors, &c.	s. 216.
Power in England to restrain fraudulent persons from managing companies.	s. 217.
Delegation to Liquidator of certain powers of court in England.	s. 220.
Power in England to appoint Official Receiver as receiver for debenture holders or creditors.	s. 307.

A.D. 1929.

TENTH SCHEDULE.

Sections 313, 329, 379.

Table of Fees to be paid to the Registrar of Companies.

I.—By a Company having a Share Capital.

	£	s.	d.
For registration of a company whose nominal share capital does not exceed 2,000*l.* - - -	2	0	0
For registration of a company whose nominal share capital exceeds 2,000*l.*, the following fees, regulated according to the amount of nominal share capital (that is to say);			
For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, up to 5,000*l.*	1	0	0
For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, after the first 5,000*l.*, up to 100,000*l.* - -	0	5	0
For every 1,000*l.* of nominal share capital, or part of 1,000*l.*, after the first 100,000*l.* - - - - -	0	1	0
For registration of any increase of share capital made after the first registration of the company, the same fees per 1,000*l.*, or part of a 1,000*l.*, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration:			
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration - - - - - - -			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company - - - - - - - -			
For registering any document by this Act required or authorised to be registered or required to be delivered sent or forwarded to the registrar other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England - -	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar - -	0	5	0

II.—BY A COMPANY NOT HAVING A SHARE CAPITAL.

	£	s.	d.
For registration of a company whose number of members as stated in the articles does not exceed 25	2	0	0
For registration of a company whose number of members as stated in the articles exceeds 25, but does not exceed 100, the above fee of 2*l.* with an additional 1*l.* for every additional 25 members or less after the first 25 - - - - - - -			
For registration of a company whose number of members as stated in the articles exceeds 100 but is not stated to be unlimited, a fee of 5*l.* with an additional 5*s.* for every additional 50 members or less after the first 100 - - - - - - -			
For registration of a company in which the number of members is stated in the articles to be unlimited -	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase - - - -	0	5	0
Provided that no company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered or required to be delivered, sent or forwarded to the registrar, other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding up in England -	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar - -	0	5	0

III.—BY A COMPANY TO WHICH PART XI OF THIS ACT APPLIES

For registering any document required to be delivered to the registrar under Part XI of this Act, except documents required to be delivered under section three hundred and fifty-three of this Act -	0	5	0

ELEVENTH SCHEDULE.

s. 362. **Provisions referred to in Section 362 of the Act.**

Provisions relating to—

s. 15.	Conclusiveness of certificate of incorporation;
s. 35.	Specific requirements as to particulars in prospectus;
s. 40.	Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar;
s. 42.	Return as to allotments;
s. 79.	Registration of charges created by company registered in England;
s. 80 (1).	Duty of company to register charges created by company;
s. 81.	Duty of company to register charges existing on property acquired;
s. 90.	Application of Part III to companies incorporated outside England;
s. 94.	Restrictions on commencement of business;
s. 108 (3) (*n*) (*o*).	The particulars as to directors and indebtedness of the company;
s. 113.	Statutory meeting and statutory report;
s. 134 (1) (2)	Auditors' report and right to information and explanations;
s. 140.	Restrictions on appointment or advertisement of director;
s. 250.	Notice by liquidator of his appointment;
s. 310.	Delivery to registrar of accounts of receivers and managers;
s. 344.	Documents, &c., to be delivered to registrar by companies carrying on business in Great Britain;
s. 346.	Return to be delivered to registrar where documents, &c. altered;
s. 347.	Balance sheet of company carrying on business in Great Britain;
s. 348.	Obligation to state name of company, &c.
s. 376.	Annual report by Board of Trade.

TWELFTH SCHEDULE.

A.D. 1929.

Section 381.

Part I.

Enactments repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
45 & 46 Vict. c. 72.	The Revenue, Friendly Societies and National Debt Act, 1882.	Section eleven, and in the First Schedule the words "7 Geo. IV. c. 46, 7 Geo. " IV. c. 67, 7 & 8 Vict. " c. 32, s. 21, 8 & 9 Vict. " c. 38, s. 13."
8 Edw. 7. c. 69.	The Companies (Consolidation) Act, 1908.	The whole Act.
3 & 4 Geo. 5. c. 16.	The Foreign Jurisdiction Act, 1913.	In the Schedule, the words from " 8 Edw. 7 " to the end.
3 & 4 Geo. 5. c. 25.	The Companies Act, 1913	The whole Act.
7 & 8 Geo. 5. c. 28.	The Companies (Particulars as to Directors) Act, 1917.	The whole Act.
10 & 11 Geo. 5. c. 30.	The Unemployment Insurance Act, 1920.	Subsections (1), (2) and (3) of section twenty-six.
14 & 15 Geo. 5. c. 38.	The National Health Insurance Act, 1924.	Section one hundred and six.
15 & 16 Geo. 5. c. 84.	The Workmen's Compensation Act, 1925.	In subsection (3) of section seven, paragraphs (ii) and (iii), the words " the " following date, that is " to say :— " (*a*) in the first case," and paragraphs (*b*) and (*c*); subsection (4); in subsection (5) the words " or the company "; subsection (6).

A.D. 1929.

12th Sch. —*cont.*

Session and Chapter.	Short Title.	Extent of Repeal.
17 & 18 Geo. 5. c. 30.	The Unemployment Insurance Act, 1927.	The Fourth Schedule, so far as it amends subsection (1) of section twenty-six of the Unemployment Insurance Act, 1920.
18 & 19 Geo. 5. c. 14.	The National Health Insurance Act, 1928.	Paragraph (*a*) of section nineteen.
18 & 19 Geo. 5. c. 45.	The Companies Act, 1928	The whole Act.

Section 382.

Part II.

Enactments saved

An Act to Regulate Joint Stock Banks in England (7 & 8 Vict. c. 113, s. 47).

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

The Joint Stock Banking Companies Act, 1857, Part of s 12.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.

APPENDIX I.

Section 55 of the Finance Act, 1927.

A.D. 1927.

55.—(1) If in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any companies it is shown to the satisfaction of the Commissioners of Inland Revenue that there exist the following conditions, that is to say—

Relief from capital and transfer stamp duty in case of reconstructions or amalgamations of companies.

(*a*) that a company with limited liability is to be registered, or that since the commencement of this Act a company has been incorporated by letters patent or Act of Parliament, or the nominal share capital of a company has been increased;

(*b*) that the company (in this section referred to as "the transferee company") is to be registered or has been incorporated or has increased its capital with a view to the acquisition either of the undertaking of, or of not less than ninety per cent. of the issued share capital of, any particular existing company;

(*c*) that the consideration for the acquisition (except such part thereof as consists in the transfer to or discharge by the transferee company of liabilities of the existing company) consists as to not less than ninety per cent. thereof—

(i) where an undertaking is to be acquired, in the issue of shares in the transferee company to the existing company or to holders of shares in the existing company; or

(ii) where shares are to be acquired, in the issue of shares in the transferee company to the holders of shares in the existing company in exchange for the shares held by them in the existing company;

then, subject to the provisions of this section,—

(A) The nominal share capital of the transferee company, or the amount by which the capital of the transferee

A.D. 1927.

company has been increased, as the case may be, shall, for the purpose of computing the stamp duty chargeable in respect of that capital, be treated as being reduced by either—

(i) an amount equal to the amount of the share capital of the existing company in respect of which stamp duty has been paid, or, in the case of the acquisition of a part of an undertaking, equal to such proportion of the said share capital as the value of that part of the undertaking bears to the whole value of the undertaking; or

(ii) the amount to be credited as paid up on the shares to be issued as such consideration as aforesaid,

whichever amount is the less; and

(B) Stamp duty under the heading "Conveyance or Transfer on Sale" in the First Schedule to the Stamp Act, 1891, shall not be chargeable on any instrument made for the purposes of or in connection with the transfer of the undertaking or shares, nor shall any such duty be chargeable under section twelve of the Finance Act, 1895, on a copy of any Act of Parliament, or on any instrument vesting, or relating to the vesting of the undertaking or shares in the transferee company:

58 & 59 Vict. c. 16.

Provided that—

(*a*) no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to whicl it would but for this section be liable or it has in accordance with the provisions of section twelve of the Stamp Act, 1891, been stamped with a particular stamp denoting either that it is not chargeable with any duty or that it is duly stamped; and

(*b*) in the case of an instrument made for the purposes of or in connection with a transfer to a company within the meaning of the Companies (Consolidation) Act, 1908, the provisions of paragraph (B) of this subsection shall not apply unless the instrument is either—

8 Edw. 7. c. 69.

A.D. 1927.

(i) executed within a period of twelve months from the date of the registration of the transferee company or the date of the resolution for the increase of the nominal share capital of the transferee company, as the case may be; or

(ii) made for the purpose of effecting a conveyance or transfer in pursuance of an agreement which has been filed, or particulars of which have been filed, with the registrar of companies within the said period of twelve months.

(2) For the purposes of a claim for exemption under paragraph (B) of subsection (1) of this section, a company which has, in connection with a scheme of reconstruction or amalgamation, issued any unissued share capital shall be treated as if it had increased its nominal share capital.

(3) A company shall not be deemed to be a particular existing company within the meaning of this section unless it is provided by the memorandum of association of, or the letters patent or Act incorporating, the transferee company that one of the objects for which the company is established is the acquisition of the undertaking of, or shares in, the existing company, or unless it appears from the resolution, Act or other authority for the increase of the capital of the transferee company that the increase is authorised for the purpose of acquiring the undertaking of, or shares in, the existing company.

(4) In a case where the undertakings of or shares in two or more companies are to be acquired, the amount of the reduction to be allowed under this section in respect of the stamp duty chargeable in respect of the nominal share capital or the increase of the capital of a company shall be computed separately in relation to each of those companies.

(5) Where a claim is made for exemption under this section, the Commissioners of Inland Revenue may require the delivery to them of a statutory declaration in such form as they may direct, made in England by a solicitor of the Supreme Court or in Scotland by an enrolled law agent, and of such further evidence, if any, as the Commissioners may reasonably require.

A.D. 1927.

(6) If—

(*a*) where any claim for exemption from duty under this section has been allowed, it is subsequently found that any declaration or other evidence furnished in support of the claim was untrue in any material particular, or that the conditions specified in subsection (1) of this section are not fulfilled in the reconstruction or amalgamation as actually carried out; or

(*b*) where shares in the transferee company have been issued to the existing company in consideration of the acquisition, the existing company within a period of two years from the date, as the case may be, of the registration or incorporation, or of the authority for the increase of the capital, of the transferee company ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so issued to it; or

(*c*) where any such exemption has been allowed in connection with the acquisition by the transferee company of shares in another company, the transferee company within a period of two years from the date of its registration or incorporation or of the authority for the increase of its capital, as the case may be, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so acquired;

the exemption shall be deemed not to have been allowed, and an amount equal to the duty remitted shall become payable forthwith, and shall be recoverable from the transferee company as a debt due to His Majesty, together with interest thereon at the rate of five per cent. per annum in the case of duty remitted under paragraph (A) of subsection (1) of this section from the date of the registration or incorporation of the transferee company or the increase of its capital, as the case may be, and in the case of duty remitted under paragraph (B) of the said subsection from the date on which it would have become chargeable if this Act had not passed.

(7) If in the case of any scheme of reconstruction or amalgamation the Commissioners of Inland Revenue are satisfied that at the proper time for making a claim for exemption from duty under subsection (1) of this section there were in existence all the necessary conditions for such exemption other than the condition that not less than ninety per cent. of the issued share capital of the existing company would be acquired by the transferee company, the Commissioners may, if it is proved to their satisfaction that not less than ninety per cent. of the issued capital of the existing company has under the scheme been acquired within a period of six months from the earlier of the two following dates, that is to say— A.D. 1927. —

(*a*) the last day of the period of one month after the first allotment of shares made for the purposes of the acquisition; or

(*b*) the date on which an invitation was issued to the shareholders of the existing company to accept shares in the transferee company;

and on production of the instruments on which the duty paid has been impressed, direct repayment to be made of such an amount of duty as would have been remitted if the said condition had been originally fulfilled.

(8) In this section, unless the context otherwise requires—

References to the undertaking of an existing company include references to a part of the undertaking of an existing company:

The expression " shares " includes stock.

Section 31 *of the Finance Act*, 1928.

31. Subsection (1) of Section 55 of the Finance Act, 1927 (which relates to relief from capital and transfer stamp duty in the case of reconstructions or amalgamations of companies), shall be amended as follows: A.D. 1928.

(1) The following shall be substituted for paragraph (A) (ii):—

(ii) the amount to be credited as paid up on the shares to be issued as such consideration as

A.D. 1928.

aforesaid and on the shares, if any, to be issued to creditors of the existing company in consideration of the release of debts (whether secured or unsecured) due or accruing due to them from the existing Company or of the assignment of such debts to the transferee Company.

(2) In paragraph (B) there shall be inserted after the words "transfer of the undertaking or shares" the words, "or on any instrument made for the purposes of or in connection with the assignment to the transferee Company of any debts secured or unsecured, of the existing Company."

(3) At the end there shall be inserted the following additional proviso:

"; and

(*c*) the foregoing provision with respect to the release and assignment of debts of the existing company shall not, except in the case of debts due to banks or to trade creditors, apply to debts which were incurred less than two years before the proper time for making a claim for exemption under this section."

APPENDIX II.

Pensions.

The question of granting pensions or superannuation allowances to its employees and the establishment of a contributory or non-contributory fund for the purpose is of importance to most Companies.

Express power is generally taken in the Memorandum for this purpose, but in any case it is within the powers of Companies established under the Companies Acts to grant such pensions. See Anderson *v.* Bank of Australasia (45 Ch. D. 330); Cyclists' Touring Club *v.* Hopkinson (1910, 1 Ch. 179).

Such funds are generally vested in trustees, and not being " Charitable " care must be taken that the rule against perpetuities is not infringed. See *re* Drummond (1914, 2 Ch. 90).

Companies which contemplate a contributory fund may well take advantage of Section 32 of the Finance Act, 1921, and the Regulations made thereunder (printed in full at the end). The fund, if approved, will effect a saving in the Company's income tax.

Advantage may also be taken of the provisions of the Superannuation and Other Trust Funds (Validation) Act, 1927, to avoid the rule against perpetuities altogether, whether the Rules were made before or after the commencement of this Act, for by Section 4 the Registrar may amend the Rules by deleting any provisions inserted to avoid offending against the rule against perpetuities; and registration under this Act is an absolute protection.

Section 32 of the Finance Act, 1921.

A.D. 1921.

Exemption of superannuation funds from income tax.

32.—(1) Subject to the provisions of this section and to any regulations made thereunder, exemption from income tax shall be allowed in respect of income derived from investments or deposits of a superannuation fund, and, subject as aforesaid, any sum paid by an employer or employed person by way of contribution towards a superannuation fund shall, in computing profits or gains for the purpose of an assessment to income tax under

A.D. 1921. Case I. or Case II. of Schedule D. or under Schedule E., be allowed to be deducted as an expense incurred in the year in which the sum is paid:

Provided that—

(*a*) no allowance shall be made under the foregoing provision in respect of any contribution by an employed person which is not an ordinary annual contribution, and, where a contribution by an employer is not an ordinary annual contribution, it shall, for the purpose of the foregoing provision, be treated as the Commissioners may direct, either as an expense incurred in the year in which the sum is paid or as an expense to be spread over such periods of years as the Commissioners think proper; and

(*b*) no allowance shall be made under this section in respect of any payments in respect of which relief can be given under section thirty-two of the Income Tax Act, 1918.

(2) Income tax chargeable in respect of an annuity paid out of a superannuation fund to a person residing in the United Kingdom shall, if the Commissioners so direct, be assessed and charged on the annuitant under Case VI. of Schedule D. instead of being deducted and accounted for under Rule 21 of the General Rules, and tax shall be computed on the full amount of the annuity arising in the year of assessment.

(3) For the purposes of this section, the expression "superannuation fund" means, unless the context otherwise requires, a fund which is approved for those purposes, by the Commissioners, and, subject as hereinafter provided, the Commissioners shall not approve any fund unless it is shown to their satisfaction that—

(*a*) the fund is a fund bonâ fide established under irrevocable trusts in connection with some trade or undertaking carried on in the United Kingdom by a person residing therein;

(*b*) the fund has for its sole purpose the provision of annuities for persons employed in the trade or undertaking either on retirement at a specified age or on becoming incapacitated at some earlier age;

(*c*) the employer in the trade or undertaking is a contributor to the fund; A.D. 1921.

(*d*) the fund is recognised by the employer and employed persons in the trade or undertaking:

Provided that the Commissioners may, if they think fit, and subject to such conditions, if any, as they think proper to attach to the approval, approve a fund, or any part of a fund, as a superannuation fund for the purposes of this section—

(i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund; or

(ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose; or

(iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the United Kingdom and by a person not residing therein.

(4) The Commissioners may make regulations generally for the purpose of carrying this section into effect and, in particular, without prejudice to the generality of the foregoing provision, may by such regulations—

(*a*) provide for the charging of and accounting for tax in respect of contributions (including interest) repaid to a contributor to a superannuation fund and on lump sums paid in commutation of or in lieu of annuities payable out of a superannuation fund as if any sums so repaid or paid were income of the year in which they are repaid or paid;

(*b*) require the trustees or other persons having the management of a superannuation fund, or an employer whose employees contribute to a superannuation fund, to deliver to the Commissioners such information and particulars as the Commissioners may reasonably require for the purposes of this section;

(*c*) prescribe in the manner in which claims for relief under this section are to be made and approved,

A.D. 1921.

and in which applications for the approval of a superannuation fund are to be made;

(*d*) provide for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this section;

(*e*) provide for determining what contributions to a superannuation fund are to be treated as ordinary annual contributions for the purposes of this section.

(5) Where at the commencement of this Act there is in force any arrangement between the Commissioners and the persons having the management of a superannuation fund by which provision is made for allowing any such deductions for the purpose of income tax as may be allowed for that purpose under this section, the arrangement shall, if the fund is approved as a superannuation fund for the purposes of this section for the year 1921–22, be deemed to have ceased to operate as from the sixth day of April, nineteen hundred and twenty-one, and, if the fund is not so approved, shall cease to operate as from the sixth day of April, nineteen hundred and twenty-two.

(6) In this section the expression "the Commissioners" means the Commissioners of Inland Revenue.

STATUTORY RULES AND ORDERS.

1921, No. 1699.

INCOME TAX.

Superannuation Funds.

Regulations, dated November 10, 1921, made by the Commissioners of Inland Revenue under section 32 of the Finance Act, 1921 (11 & 12 Geo. 5, c. 32).

1. Application for the approval of any fund or any part of a fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to H.M. Inspector of Taxes for the district in which the office of the fund is situated or the fund is administered and shall be supported by a copy of the

instrument under which the fund is established and two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up and such other information as the Commissioners may reasonably require.

2. Any alteration in the rules, constitution, objects, or conditions of the fund made at any time after the date of the application for approval shall be notified forthwith to the Inspector. In default of such notification, any approval given shall, unless the Commissioners otherwise determine, be deemed to have been withdrawn at the date from which the alteration had effect.

3. If the facts in regard to any fund or part of a fund shall, in the opinion of the Commissioners, cease to warrant the continuance of their approval under the above-mentioned section then and in such case the Commissioners may withdraw their approval and shall give notice to the trustees of the fund of such withdrawal, and of the date from which such withdrawal is to take effect.

4. If a fund or part of a fund is approved by the Commissioners the fact shall be communicated to the trustees of the fund in writing and where a fund or part of a fund is approved subject to conditions these conditions shall also be communicated to the trustees of the fund in writing.

5. The expression "ordinary annual contribution" shall mean an annual contribution of a fixed amount or an annual contribution calculated on some definite basis by reference to the earnings, contributions or numbers of the members of the fund.

6. The amount of the employer's contribution which may be deducted as an expense in the case of a local authority which is assessable to income tax in respect of the profits of a trade shall be such part of the authority's total contribution as is made in respect of the persons employed in such trade, and in the case of any other employer shall not exceed the amount contributed by him in respect of the persons employed by him in the trade in respect of the profits of which he is assessable to United Kingdom Income Tax.

7. Where contributions (including interest on contributions, if any) are repaid to the employer the trustees of the fund shall deduct income tax from the amount

A.D. 1921.

so repaid at the rate in force for the year in which the repayment is made and such amount shall be deemed for purposes of income tax, super tax and corporation profits tax to be income of the recipient for that year; the tax so deducted shall be a debt from the trustees of the fund to the Crown and recoverable as such accordingly and the provision contained in Section 2 of the Act of 54 and 55 Victoria, c. 38, in relation to money in the hands of any person for stamp duty shall apply to the tax so deducted.

8. Where any contributions (including interest on contributions, if any) are repaid to an employed person during his lifetime or where a lump sum is paid in commutation of or in lieu of an annuity, income tax on the amount so repaid or paid shall, except in the case of an employed person whose employment was carried on abroad, be paid by the trustees of the fund who shall make such payment at the rate of one-third the standard rate in force for the year in which the repayment or payment is made, and the said tax shall be a debt due from the trustees of the fund to the Crown and recoverable accordingly.

9. Where annuities are paid by a superannuation fund to persons residing out of the United Kingdom, income tax in respect of such annuities shall be deducted and accounted for by the trustees of the fund under Rule 21 of the General Rules applicable to Schedules A, B, C, D and E of the Income Tax Act, 1918, provided that income tax shall not be required to be deducted and accounted for in the case of a person so resident whose employment was carried on abroad.

10. The trustees or other persons having the management of a superannuation fund and an employer who contributes to a superannuation fund, shall, when required by notice from the Inspector within fourteen days from the date of such notice—

(*a*) furnish to the Inspector a return containing such particulars of contributions made to the fund as the notice may require;

(*b*) prepare and deliver to the Inspector a return containing—

(i) the name and place of residence of every person in receipt of an annuity from the fund,

(ii) the amount of the annuity payable to each annuitant,

(iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employed persons, and

(iv) particulars of sums paid in commutation or in lieu of annuities.

(*c*) furnish to the Inspector a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up together with such other information and particulars as the Commissioners may reasonably require.

11. Where an employer deducts from the emoluments paid to an employed person or pays on his behalf any contribution of that employed person to a superannuation fund he shall include particulars of such deduction or payment in any return of wages and salaries which he is required to furnish under Section 105 of the Income Tax Act, 1918, or the regulations made thereunder.

12. A claim for relief in respect of income derived from the investments or deposits of a superannuation fund shall be made and signed by the trustees of the fund and all the provisions of the Income Tax Acts which relate to claims for any allowance or deduction or the proof to be given with respect to those claims shall apply to claims for relief under Section 32 of the Finance Act, 1921, and the proof to be given with respect to those claims. Any tax for which the trustees of the fund are required to account may be set off in the settlement of such claim.

13. If a fund or part of a fund for any reason ceases to be an approved fund the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(*a*) on account of returned contributions (including interest on contributions, if any), and

(*b*) in commutation of or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of a fund ceased to be an approved fund, and the provisions of Regulations 7 and 8 shall apply, with the necessary modifications.

By Order of the Commissioners of Inland Revenue.

R. V. Nind Hopkins,
Secretary.

10th November, 1921.

APPENDIX III.

Employees' Shares.

In addition to Pension and Superannuation Funds, benefit funds, and the like, many Companies try to interest their employees in the success of the Company by giving them a direct interest in its prosperity. This may be achieved either by means of a profit-sharing scheme, under which a percentage of the profits is allocated to the employees in various grades, or by providing funds to enable a purchase to be made by independent trustees of a block of shares in the Company, the dividends on which are allocated as under a profit-sharing scheme. As regards the second method, there has always been some doubt whether it does not amount to an indirect purchase by the Company of its own shares. See Trevor *v.* Whitworth (1887), 12 A.C. 409.

But as by Section 45 of the Companies Act, 1929, this case has been given statutory effect, proviso (*b*) does away with any doubts which may have existed.

The objection to all or any of these methods is that the employee cannot become a member. The Directors of some Companies recognise the psychological effect of this objection by the creation of a special class of employees' shares with facilities for their acquisition.

Here, again, the same question might arise on a loan to employees for this purpose. Proviso (*c*) resolves this question. After the commencement of the Act Directors can safely choose one or other of these alternatives.

In some cases this special class of share is given merely a preferential fixed dividend with priority of return of capital in a winding up; in other cases a participating preferential dividend and similar priority as to return of capital in a winding up. In others again, the same rights as ordinary shares as to dividend, with perhaps priority as to return of capital in a winding up.

Shares of this special class are seldom given any voting rights, and are dealt with under a special code which ensures that they shall be tied up to either present or past employees (or in some cases relatives) by provisions as to compulsory transfer.

Hitherto few Companies have admitted their employees—at any rate of the lower grades—to unrestricted membership through any scheme of the nature under discussion. One obvious reason is that, unless the Company is one which is likely to enjoy uniform prosperity, the holding of the ordinary capital is attended by too much risk, but many authorities most competent to form a judgment think that the only really satisfactory method of interesting employees is to get them to run this risk. Doubtless in the case of large public Companies the difficulties are greater than in the case of businesses run by private Companies, which, being generally under easy control, offer a special field for trying out this interesting experiment.

APPENDIX IV.

Private Companies.

Ever since the time that super tax began to be a serious item the attention of the ingenious has been directed to private Companies as a means of avoiding its incidence. The person or group of persons who controlled the Company distributed by way of dividend little or nothing, and carried the balance of profits to reserve. The first attempt to deal with the position was by Section 21 of the Finance Act, 1922, which prescribed a code by which the Special Commissioners were given certain powers to deal with a suspected Company which had not "distributed to its members a reasonable part of its income," and to determine what notional dividend should be distributed for super tax purposes. As super tax is an additional charge on the income of an *individual*, or person, the device of having a holding Company also controlled by the same person or persons succeeded in restoring the former position until Section 32 of the Finance Act, 1927, was passed.

It will be noted that the test of what may be called "suspect" Companies is now control, or private Companies in the popular sense, though for the purposes of the Companies Acts they may well be public Companies, and until the Finance Act, 1927, was passed, registration as, or turning a private Company into, a public Company (under the Companies Acts) was sufficient to avoid the 1922 code.

The uses to which the income of a Company of this description may be put are so various that, after exhausting a few of the more obvious ones in Section 31 (1) (*a*) of the Finance Act, 1927, the Legislature has in despair enacted the extraordinary provision contained in (1) (*b*): "any sum expended or applied, or intended to be expended or applied in pursuance or in consequence of any *fictitious* or *artificial transaction.*"

The Legislature has further by Section 31 (4) (5) and (6) of the Finance Act, 1927, prevented the

income of such Companies from being "capitalised" by means of a winding up. The test applied first in the Finance Act, 1922, has now been radically altered by Section 31 (3) of the Finance Act, 1927: "any company which is under the control of not more than five persons, and which is not a subsidiary company, or a company in which the public are substantially interested."

The common complaint that many well-meaning controlled Companies would be hardly used under the 1922 code was met first by Section 31 (7) of the Finance Act, 1927, and a year later by Section 18 of the Finance Act, 1928.

It is early yet to anticipate how this amended code is going to work, but every private Company (in the popular sense) which comes within the definition will have to consider it carefully.

Section 21 *of the Finance Act*, 1922.

21. With a view to preventing the avoidance of the payment of super-tax through the withholding from distribution of income of a company which would otherwise be distributed, it is hereby enacted as follows:

A.D. 1922. — Super-tax on undistributed income of certain companies.

(1) Where it appears to the Special Commissioners that any company to which the section applies has not, within a reasonable time after the end of any year or other period, ending on any date subsequent to the fifth day of April, nineteen hundred and twenty-two, for which accounts have been made up, distributed to its members in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax, a reasonable part of its actual income from all sources for the said year or other period, the Commissioners may, by notice in writing to the company, direct that for purposes of assessment to super-tax, the said income of the company shall, for the year or other period specified in the notice, be deemed to be the income of the members and the amount thereof shall be apportioned among the members:

Provided that, in determining whether any company has or has not distributed a reasonable part of its income as aforesaid, the Commissioners shall have regard not only to the current requirements of the company's business

A.D. 1922. but also to such other requirements as may be necessary or advisable for the maintenance and development of that business.

(2) Any super-tax chargeable under this section in respect of the amount of the income of the company apportioned to any member of the company, shall be assessed upon that member in the name of the company, and, subject as hereinafter provided, shall be payable by the company, and all the provisions of the Income Tax Acts and any regulations made thereunder relating to super-tax assessments and the collection and recovery of super-tax shall, with any necessary modification, apply to super-tax assessments and to the collection and recovery of super-tax charged under this section.

(3) A notice of charge to super-tax under this section shall in the first instance be served on the member of the company on whom the tax is assessed, and if that member does not within twenty-eight days from the date of the notice elect to pay the tax a notice of charge shall be served on the company and the tax shall thereupon become payable by the company:

Provided that nothing in this subsection shall prejudice the right to recover from the company the super-tax charged in respect of any member who has elected as aforesaid but who fails to pay the tax by the first day of January in the year of assessment or within twenty-eight days of the date on which he so elected, whichever is later.

(4) Any undistributed income which has been assessed and charged to super-tax under this section shall, when subsequently distributed, be deemed not to form part of the total income from all sources for the purposes of super-tax of any individual entitled thereto.

Where a member of a company has been assessed to and has paid super-tax otherwise than under this section in respect of any income which has also been assessed and upon which super-tax has been paid under this section, he shall, on proof to the satisfaction of the Special Commissioners of the double assessment, be entitled to repayment of so much of the super-tax so paid by him as was attributable to the inclusion in his total income from all sources of the first-mentioned income.

(5) Where super-tax is charged under this section in respect of the income of a company for any year or other

period, the Commissioners of Inland Revenue shall on a certificate from the Special Commissioners that the super-tax has been accounted for, repay to the company the amount of any corporation profits tax paid by the company in respect of the corresponding accounting period or part thereof.

(6) This section shall apply to any company—

(*a*) which has, since the fifth day of April, nineteen hundred and fourteen, been registered under the Companies Acts, 1908 to 1917; and

(*b*) in which the number of shareholders computed as hereinafter provided is not more than fifty; and

(*c*) which has not issued any of its shares as a result of a public invitation to subscribe for shares; and

(*d*) which is under the control of not more than five persons.

For the purposes of this subsection—

In computing the number of shareholders of a company there shall be excluded any shareholder who is a trustee or nominee for some person otherwise owning or beneficially interested in shares in the company, or who is an employee of the company, or is the wife or the unmarried infant child of a beneficial owner of shares in the company;

A company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or relatives or nominees of those persons, or where the control is by any other means whatever in the hands of those persons;

The expression "relative" means a husband or wife, ancestor, or lineal descendant, brother, or sister;

The expression "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person;

Persons in partnership and persons interested in the estate of a deceased person or in property held on a trust shall, respectively, be deemed to be a single person.

A.D. 1922.

(7) In this section the expression "member" shall include any person having a share or interest in the capital or profits or income of a company, and the expression "employee" shall not include any governing director, managing director, or director.

(8) The provisions contained in the First Schedule to this Act shall have effect as to the computation of the actual income from all sources of the company, the apportionment thereof amongst members of the company, and otherwise for the purpose of carrying into effect, and in connection with, this section.

(9) The provisions of this section shall apply for the purposes of assessment to super-tax for the year 1923–24 and any succeeding year of assessment.

FIRST SCHEDULE.

Section 21.

1. A company which is aggrieved by any direction given under section twenty-one of this Act may appeal to the Special Commissioners against the direction by giving notice of appeal to the Clerk to the Commissioners within twenty-one days after the date of the notice, and the Commissioners shall hear and determine the appeal, subject as herein provided, and the provisions of the Income Tax Acts relating to appeals against assessments shall, with any necessary modification, apply for the purposes of an appeal under this provision.

2. If either the Company or the Commissioners of Inland Revenue are dissatisfied with the determination of the Special Commissioners on any appeal under the foregoing provisions of this schedule, they may, on giving notice to the Clerk to the Special Commissioners within twenty-one days after the determination, require the appeal to be reheard by the Board of Referees and the Special Commissioners shall transmit to the Board any document in their possession which was delivered to them for the purposes of the appeal.

The Board shall rehear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the Special Commissioners might have and exercise, and the determination of the Board thereon shall be final and conclusive:

Provided that section one hundred and forty-nine of the Income Tax Act, 1918 (which relates to the statement

of a case on a point of law), shall apply with the necessary modifications in the case of any such rehearing and determination as it applies in the case of appeals to the General or Special Commissioners under the said Act.

3. The provisions of subsection (6) of section seven of the Income Tax Act, 1918, relating to the representation of the Crown on super-tax appeals shall, with the necessary modifications, apply to any appeal under this schedule.

4. The Special Commissioners may, at any time by notice in writing, require any company which appears to them to be a company to which section twenty-one of this Act applies, to furnish them with—

(*a*) a statement of the actual income of the company from all sources, together with a copy of the company's accounts for any year or other period for which the company's accounts have been made up and such particulars as the Commissioners may reasonably require as to the income of the company and the manner in which the income has been dealt with; and

(*b*) a statement for the same period of the names and addresses and particulars of the respective interests of all members of the company.

5. Where the Special Commissioners have issued a notice requiring a company to furnish them with particulars under paragraph 4 of this schedule as respects any year or other period, and the auditor of the accounts of the company is a member of an incorporated society of accountants, the directors may, if they think fit, make and submit to the auditor such a statutory declaration as is hereinafter mentioned, and in such case the following provisions shall have effect:

(*a*) The directors of the company shall make a statutory declaration as to—

(i) The amount which they regard, or regarded, as proper to be retained in the business out of the income of that year or other period; and

(ii) The amount (if any) which they propose to recommend for distribution, or which has been distributed;

setting out the reasons for such retention and giving such information as will enable the auditor to form an opinion whether the amount (if any) proposed

A.D. 1922.

for distribution or distributed, having regard to such requirements as are mentioned in the proviso to subsection (1) of the said section twenty-one, would be, or was, a reasonable part of the income for such year or other period;

(*b*) If the auditor—

(i) is satisfied that the information disclosed in the declaration is sufficient to enable him to form an opinion as to whether the proposed distribution or distribution (if any) would be or was a reasonable part of the income for such year or other period as aforesaid; and

(ii) is satisfied that a primâ facie case is made out by the reasons and information given in the declaration that the proposed distribution or distribution (if any) would be or was reasonable;

he may so certify:

(*c*) The certificate, together with the statutory declaration, shall be sent to the Special Commissioners, who, unless they see reason to the contrary, shall take no further action in the matter.

6. In computing the actual income from all sources of a company for any year or period, the income from any source shall be estimated in accordance with the provisions of the Income Tax Acts relating to the computation of income from that source; except that the income shall be computed by reference to the income for such year or period as aforesaid and not according to an average of more than one year or by reference to any year or period other than such year or period as aforesaid.

7. If any company fails or refuses on being so required in accordance with the provisions of this schedule to furnish a statement of actual income from all sources or renders a statement with which the Special Commissioners are not satisfied, the Commissioners may make an estimate of that income to the best of their judgment.

8. The apportionment of the actual income from all sources of the company shall be made by the Special Commissioners in accordance with the respective interests of the members, and the income as apportioned to each member shall, for the purposes of super-tax, be deemed to represent his income from his interest in the company for the year or other period and shall be included in the

statement of his total income or in an amended statement of total income which the Special Commissioners are hereby authorised to require and shall be deemed to be the highest part of that income. A.D. 1922

9. The income apportioned to a member of a company under section twenty-one of this Act shall, for the purposes of super-tax, be deemed to have been received by him at the date to which the accounts of the company for the year or period were made up.

10. Notice of any apportionment made by the Special Commissioners shall be given by serving on the company a statement showing the amount of the actual income from all sources adopted by them for the purposes of section twenty-one of this Act, and either the amount apportioned to each member or the amount apportioned to each class of shares, as they think fit.

A company which is aggrieved by any notice of apportionment shall be entitled to appeal to the Special Commissioners on giving notice to their clerk within twenty-one days after the date of the notice, and those Commissioners shall hear and determine the appeal and all the provisions of the Income Tax Acts and any regulations made thereunder relating to appeals against assessments and to cases to be stated for the opinion of the High Court shall, with any necessary modification, apply for the purposes of any such appeal.

11. Any person in whose name any shares of a company are registered shall, if required by notice in writing by the Special Commissioners, state whether, or not he is the beneficial owner of those shares, and if not the beneficial owner of those shares or any of them shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.

If any person on being so required neglects or fails to comply with the notice within the time limited by the notice, he shall be liable to a penalty of twice the amount of super-tax that would be chargeable at the highest rate in respect of the amount of the income apportioned to such shares.

12. In this schedule the expression "Board of Referees" means the Board of Referees for the purposes of Rule 6 of the rules applicable to Cases I. and II. of Schedule D.

FINANCE ACT, 1927.

Provisions relating to Super-tax.

A.D. 1927.

Amendment of 12 & 13 Geo. 5. c. 17. s. 21.

31.—(1) Subsection (1) of section twenty-one of the Finance Act, 1922, shall have effect as if at the end thereof there were added as a new paragraph the following:—

"For the purpose of this subsection any such sum as is hereinafter described shall be regarded as income available for distribution among the members of the company and not as having been applied or being applicable to the current requirements of the company's business or to such other requirements as may be necessary or advisable for the maintenance and development of that business, that is to say:—

(*a*) Any sum expended or applied, or intended to be expended or applied, out of the income of the company, otherwise than in pursuance of an obligation entered into by the company before the fourth day of August, nineteen hundred and fourteen—

(i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character in fact acquired by the company; or

(ii) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or

(iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property:

(*b*) Any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction:"

Provided that the addition to the said section twenty-one of the foregoing new paragraph shall not operate so as to make the said section apply as respects any company unless it appears to the Special Commissioners, not only that income of the company has been or is to be expended or applied for one or more of the purposes mentioned in the said paragraph, but also that the company has not in fact distributed a reasonable part of its actual income in such a manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax. A.D. 1927. —

(2) Subsection (1) of the said section twenty-one shall have effect as if after the words "apportioned among the members," there were inserted the words "and super-tax shall be assessed and charged under the "provisions of this section in respect of the sum so "apportioned after deducting in the case of each "member any amount which has been distributed to "him by the company in respect of the said year or "period in such a manner that the amount distributed "falls to be included in the statement of total income "to be made by that member for the purposes of "super-tax."

(3) In subsection (6) of the said section twenty-one, for the words from the beginning thereof down to and including the words "beneficial owner of shares in the company" there shall be substituted the following:—

"This section shall apply to any company which is under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested.

For the purpose of this subsection—

A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this section apply, or of two or more companies none of which is a company to which those provisions apply;

A company shall be deemed to be a company in which the public are substantially interested if

A.D. 1927

shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year or other period for which the accounts of the company have been made up as aforesaid beneficially held by, the public (not including a company to which the provisions of this section apply) and any such shares have in the course of such year or other period been the subject of dealings on a stock exchange in the United Kingdom and the shares have been quoted in the official list of such a stock exchange.

8 Edw 7. c. 6.

The expression 'company' means a company within the meaning of the Companies (Consolidation) Act, 1908."

(4) Where an order has been made or a resolution passed for the winding-up of a company to which the said section twenty-one applies, the income of the company for the period from the end of the last year or other period for which accounts of the company have been made up to the date of the order or resolution for winding up shall, for the purposes of the said section, be deemed to be income of that period available for distribution to the members of the company, and, as respects that period and the next preceding year or other preceding period or periods ending within that next preceding year for which accounts have been made up, the said section shall apply as if the words "within a reasonable time" in subsection (1) of the said section were omitted therefrom.

(5) Any notice required under the provisions of the said section twenty-one to be served upon a company may, where the company is in liquidation, be served upon the liquidator of the company, and the liquidator shall be responsible for doing all matters or things required to be done by or on behalf of the company, and the liquidator shall be responsible for the due payment of any super-tax payable by or recoverable from the company under the provisions of the said section.

(6) The income apportioned to a member of a company for the period from the end of the last year or other period for which accounts have been made up to the date of the order or resolution for winding up shall, for the purposes of super-tax, be deemed to have been received by or on the date of that order or resolution. A.D. 1927

(7) The following shall be substituted for paragraph 5 of the First Schedule to the Finance Act, 1922:—

"5.—(*a*) Where the Special Commissioners have—

(i) issued a notice requiring any company to furnish them with particulars under paragraph 4 of this schedule as respects any year or other period; or

(ii) given a direction under subsection (1) of section twenty-one of this Act as respects any year or other period in relation to any company to which no such notice has been issued as respects that year or period;

the directors of the company, if they are of opinion that there has not been and will not be any avoidance of the payment of super-tax through failure to distribute to the members of the company a reasonable part of its income for that year or period, may make a statutory declaration to that effect stating the facts and circumstances upon which their opinion is based;

(*b*) In any case where such a statutory declaration as aforesaid is sent to the Special Commissioners within twenty-eight days of the issue of such a notice or the giving of such a direction as aforesaid the Special Commissioners shall not, unless they see reason to the contrary, take any further action in the matter;

(*c*) If in any such case the Commissioners see reason to the contrary they shall send to the Board of Referees a certificate to that effect, together with the said statutory declaration, and shall at the same time transmit a copy of the certificate and of the statutory declaration to the Commissioners of Inland Revenue;

A.D. 1927.

(*d*) The Commissioners of Inland Revenue may at any time within twenty-eight days after receiving the copy of the certificate and the copy of the statutory declaration submit to the Board of Referees a counter-statement with reference to the matter;

(*e*) The Board of Referees shall in any such case take into consideration the declaration, and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a primâ facie case for proceeding in the matter;

(*f*) The determination of the Board of Referees under this paragraph shall be final and conclusive, and, where the Board of Referees determines that there is a primâ facie case for proceeding, the notice or direction aforesaid shall have effect as if it had been issued or given on the date on which notice of the determination of the Board is given to the company."

(8) The following shall be substituted for paragraph 9 of the First Schedule to the Finance Act, 1922:—

"9. The income apportioned to a member of a company so far as assessable and chargeable to super-tax under section twenty-one of this Act shall for the purposes of that tax be deemed to have been received by him on the date to which the accounts of the company for the year or period were made up or, if an application in that behalf is made by the company to the Special Commissioners at any time within the period limited by this Schedule for giving notice of appeal against the direction to the Special Commissioners, on such date as those Commissioners determine to be just, having regard to the dates on which distributions of income have been made by the company, and so as to avoid, as far as possible, the inclusion for the purposes of super-tax for any year of income referable to more than one year."

Application of 12 & 13 Geo. 5. c. 17. s. 21 to interconnected companies.

32.—(1) Where a member of a company (in this section referred to as "the first company"), the income of which for any year or period has been deemed to be the income of its members and has been the subject of an apportionment (in this section referred to as "the

original apportionment") under section twenty-one of the Finance Act, 1922, is itself a company (in this section referred to as "the second company") to which the provisions of that section apply, the excess of the amount so apportioned to the second company over the amount, if any, which has been received by the second company out of the income as aforesaid of the first company in such manner as would, in the case of an individual, render the amount so received liable to be included in the statement of his income for the purposes of super-tax, shall for the purposes of the said section be deemed to be income of the members of the second company and shall be apportioned among them in accordance with their respective interests in that company, and the provisions of the said section shall, with any necessary modifications, apply accordingly.

(2) The second company shall, on being required by notice in writing to that effect given to it by the Special Commissioners, furnish the Commissioners with a statement showing the names and addresses and particulars of the respective interests of all its members as on the last day of the year or other period the income of which formed the subject of the original apportionment, and the income apportioned as aforesaid to the members of the second company shall, for the purposes of super-tax, be deemed to have been received by those members on the date on which the income apportioned as aforesaid to the members of the first company is deemed to have been received by them.

(3) Any super-tax chargeable by reference to the provisions of the said section twenty-one in respect of the amount of the income of the first company apportioned to any member of the second company shall be assessed upon that member in the name of the first company, and shall, subject to the provisions of the said section as to payment by the member, be payable by the first company, and the provisions of the said section as to the assessment, collection, and recovery of super-tax chargeable in respect of the income of a company apportioned to any member thereof shall, with any necessary modifications, apply accordingly.

(4) Where a member of any such second company as aforesaid is itself a company to which the said section twenty-one applies, the income appor-

A.D. 1927.

tioned to it under the foregoing provisions of this section shall in turn be deemed to be the income of its members and apportioned to them, for purposes of assessment to super-tax, in accordance with their respective interests, and so on successively where any member to whom income of a company has been apportioned is itself a company to which the said section applies, so that successive apportionments shall in like manner be made until the entire amount of the income which was apportioned under the provisions of this section among the members of the second company has been apportioned to persons other than a company to which the said section applies, and the said section shall with any necessary modifications apply to such successive apportionments and to the furnishing of statements and to the assessment, collection and recovery of super-tax in respect of income apportioned thereunder, and, in particular, the date on which any such income is to be deemed to have been received by the member to whom it is apportioned shall be the date mentioned in subsection (2) of this section, and any super-tax which is chargeable in respect of income apportioned to a member being an individual shall be assessed and charged upon that member in the name of the first company.

Application of last six preceding sections.

37. The provisions of the last six preceding sections of this Act shall apply for the purposes of assessment to super-tax for the year 1928-29.

Section 18 *of the Finance Act*, 1928.

(1) Any company to which Section 21 of the Finance Act, 1922, applies may at any time after the general meeting at which the accounts of the company made up for any year or other period are adopted, forward to the Special Commissioners for their consideration a copy of the said accounts, together with a copy of the report, if any, of the directors for that year or period, and such further information, if any, as it may think fit, and the Special Commissioners shall, subject to the provision of this section, on receiving the said accounts and other documents, if any, proceed to consider the position of the company in relation to the said section 21.

(2) The Special Commissioners may as soon as reasonably may be, but not later than 28 days after

the receipt of the said accounts and other documents, if any, call upon the company to furnish to them within 28 days, or such extended period as they may subsequently allow, such further particulars as they may reasonably require:

Provided that if the particulars so required are not furnished to the Commissioners within the period or extended period allowed for the purpose they may proceed under this section upon the information before them.

(3) Where a company has under subsection (1) of this section forwarded to the Special Commissioners the accounts of the company for any year or other period, whether with or without any other documents, the following provisions shall have effect:

(*a*) Unless within three months after the receipt of the said accounts and other documents, or, if further particulars have been required as aforesaid, within three months after the receipt of those particulars, or the expiration of the period within which those particulars are to be furnished, as the case may be, the Special Commissioners intimate to the company their intention to take further action in the case of the company under the said section 21 in respect of that year or other period, the power of the Commissioners to take any such further action in respect of that year or other period shall absolutely cease and determine; and

(*b*) notwithstanding that the Special Commissioners have given such an intimation as aforesaid, they shall not after the expiration of six months from the date of the intimation have power in relation to that company to issue a notice under paragraph (4) of the First Schedule to the Finance Act, 1922, with respect to that year or period, or, unless such a notice has been issued before the expiration of the said period of six months, to give a direction in relation to the company under subsection (1) of section 21 of the said Act.

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